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CHAPTER 13 RIGHT OF WAY

13.1 GENERAL

“Right of Way” refers to the real property rights which local agencies must possess to construct local assistance transportation projects utilizing Federal funds. The provisions of this chapter apply to all local assistance projects involving Federal funds **off** the State Highway System (SHS), whether or not these funds are expended for purchase of real property rights. For projects **on** the State Highway System or with State-only funding, these procedures do not apply.

The authority to acquire property for a public project is found in the US Constitution and the Bill of Rights and the processes to exercise this authority are contained in Federal law.

Under Federal laws and regulations that apply whenever Federal funds are used for a project, affected property owners and those displaced by the project are entitled to be treated in ways that provide the due process of law and which ensure they are justly compensated for losses they experience.

These laws and regulations are also intended as a safeguard to ensure that Federal funds are not unnecessarily or inappropriately expended.

The information in this section has been compiled from many sources but the underlying Federal and State laws remain unchanged. This chapter should not be used as a substitute for these laws, statutes, regulations policies, and/or procedures when conducting right of way activities using Federal funds.

13.2 FEDERAL-AID AND THE FEDERAL/STATE/LOCAL AGENCY RELATIONSHIP

The Federal Highway Administration (FHWA) is the Federal agency most typically involved in transportation projects undertaken with Federal funding for the programs discussed this manual. It has the authority and responsibility for implementing and monitoring Federal laws, regulations and executive orders affecting these programs. When a project utilizes Federal funding, the FHWA is involved pursuant to these responsibilities and the delegations described below.

Caltrans has obtained major delegations of authority from FHWA under the provisions of Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and previous Transportation Acts. Further, it has passed on these delegations to local agency partners to the greatest extent possible. With each delegation goes the responsibility for initiating and completing each project phase in accordance with the appropriate State and Federal laws and regulations without extensive FHWA or State oversight.

ISTEA established provisions for Congress to adopt a National Highway System (NHS) of 155,000 miles of major roads in the United States. This system was established to provide an interconnected system of principle arterials which serve major populated centers, international border crossings, ports, airports, public transportation facilities and which meets national defense requirements as well as serving interstate travel. Until Congress made its official adoption, the NHS was defined as all principal arterials, including the Interstate system.

On November 28, 1995, the President signed the legislation defining the NHS. The system includes all Interstate routes, a selection of urban and rural principal arterials, the defense strategic highway network and strategic highway connectors.

In California, about 180 miles of local agency principal arterials were selected to be a part of the NHS. Some procedures in this manual for projects on the NHS are different from those for projects not on the NHS (non-NHS). One of the early local agency determinations should be whether the project is on the NHS.

FHWA ROLE

For all Federal-aid projects FHWA is responsible for the following project activities:

- Obligation of Federal funds
- Approval of the National Environmental Protection Act (NEPA) and other federally required environmental documents except for projects that qualify for the Programmatic Categorical Exclusion
- Approval of E-76s for Right of Way activities and utilities under the Alternate Procedure
- Execution of Project Agreements
- Acceptance of Right of Way Certification for projects on the NHS where the cost exceed \$1 million

The intent of this chapter is to provide local agencies with the basic understanding of Right of Way procedures for locally-sponsored Federal-aid transportation projects. Local agencies which will be actively involved in right of way acquisition and relocation must comply with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended in 1987 (the Uniform Act). This law can be found in the Caltrans *Right of Way Manual*, the FHWA *Project Development Guide* (see Appendices A and B) and at Section 49 of the Code of Federal Regulations (CFR) Part 24.

Note: The Uniform Act must be followed on all local agency projects even if no Federal funds are used for the acquisition of right of way for the project. Although substantial responsibility for the administration of local agency projects has been delegated to Caltrans (see below, "Caltrans Role"), FHWA has retained the overall responsibility for compliance with the Uniform Act. Towards this end, FHWA periodically performs Process Reviews of local agency projects to ensure that the Uniform Act requirements are being met.

In addition, local agencies must also comply with all requirements of Title VI of the 1964 Civil Rights Act on Federal-aid projects. This is to ensure that all services and/or benefits derived from any right of way activity will be administered without regard to race, color, gender, or national origin (see FHWA *Project Development Guide*, Appendix C-12 and 23 CFR Part 710.401, Subpart D). For additional details on the FHWA/Caltrans relationship, refer to Chapter 2, "Roles and Responsibilities," of this manual.

CALTRANS ROLE

When Federal funding is used in any phase of a local assistance project, the Federal Highway Administration (FHWA) places overall responsibility for the acquisition of right of way and the relocation of individuals, businesses, and utilities with Caltrans. Caltrans, in turn, has delegated substantial authority to local agencies. On these Federal-aid projects,

all right of way activities must be conducted in accordance with the Caltrans *Right of Way Manual* and this manual unless the local agency has adopted its own procedures which Caltrans has approved.

When the project requires the relocation of utility facilities, Caltrans is responsible for approval of the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement,” which are both part of form RW 13-15.

Caltrans is responsible for fully informing local agencies of their responsibilities accompanying Federal-aid transportation projects by ensuring that every local agency receives all current regulations and procedural instructions affecting right of way activity and, on request, will provide guidance and advice on right of way matters. Caltrans provides this information in its *Right of Way Manual*. This handbook and FHWA’s *Right of Way Project Development Guide* are available to each local agency. Also, Flow Chart 13-1, “Flow Chart of Right of Way Procedures,” gives an excellent overview of the Right of Way process.

CALTRANS DISTRICT ROLES

When questions arise in the development stage of a Federal-aid project or if it is determined that property rights will be required on the project, the local **Caltrans District Local Assistance Engineer** (DLAE) should be promptly notified. The DLAE has overall responsibility for liaison with each local agency in that district. In addition, each district has a **Right of Way Local Assistance Coordinator** who is responsible for liaison with each local agency whose projects involve Federal funds.

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans Right of Way is required to monitor local agency right of way appraisal, acquisition, relocation activities, and utilities relocation on all local assistance projects for compliance with applicable laws and regulations.

THE MONITORING PROCESS

The Caltrans District Right of Way Local Programs Coordinator will monitor right of way activities at any time during the project. Normally however, most monitoring is performed on a post-audit, spot-check basis to ensure that such activities are performed in compliance with Federal and State laws and regulations. Acquisition and relocation activities must be in conformance with the Uniform Act, Federal stewardship requirements, the FHWA *Project Development Manual* and the Caltrans *Right of Way Manual*. All right of way functional areas are subject to review. Spot-check monitoring will normally be limited to no more than 25 % of the total work performed. Additional reviews shall be made only when violations are discovered and then only to determine if the violations are prevalent or one-time occurrences (see below, “Monitoring Findings”).

The reviewer shall bring these violations to the attention of the agency, and it is the agency’s responsibility to ensure correction. The selection of projects to monitor shall be at the discretion of the district, based on staff availability, familiarity with the local agency, the project and the consultants which may be used, as well as the complexity of the right of way issues.

Monitoring will usually use check lists or outlines to guide the review. Both entry and exit conferences will be conducted to advise agency staff of the scope and findings of the monitoring visit. A written report will usually be provided to the local agency, though not necessarily at the time of the exit conference.

MONITORING FINDINGS

Monitoring Reviews may result in findings with different levels of seriousness.

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Violations of What Caltrans Considers to be Good Business Practice

These are practices which could be improved with the result being a more efficient or effective operation and/or reduced chance that more serious violations will occur subsequently. Local agencies will be advised of these observations, but there is no penalty associated with them. Agencies are free to adopt suggested changes or not as their management judgment indicates.

Violations of Practices Where Correction is Considered Mandatory

Local agencies will be expected to change their practices to conform to Caltrans' requirements. For qualified agencies, failure to do so may jeopardize their qualification status for future projects. In addition, serious violations of this nature must be corrected, particularly when it appears that a violation of property owner rights or Federal stewardship requirements is involved. Local agencies will be advised in writing of such violations and of the corrective actions to be taken. Failure to complete the corrective actions within reasonable time periods may result in withdrawal of Federal funding for the project.

For additional details, refer to Chapter 20, "Deficiencies and Sanctions" of this manual.

QUALIFYING LOCAL AGENCIES

Caltrans qualifies local agencies to perform their own right of way functions (see below, "Qualification of Local Agencies").

Caltrans also provides training and guidance to local agencies seeking assistance on Federal-aid projects.

LOCAL AGENCY ROLE

CERTIFICATION OF PROJECTS

The local agency will certify that all Uniform Act requirements have been met on Federal-aid projects.

QUALIFICATION OF LOCAL AGENCIES

Caltrans has an agreement with FHWA that allows local agencies to be certified in advance to perform all or some right of way activities based on the local agency's qualifications, the size of their staff and their ability to do technical work and subsequent reviews. The Caltrans District Right of Way staff conducts a qualification review to determine if the local agency is organized and staffed to conduct right of way activities in accordance with accepted procedures. The review is necessary before the local agency can begin right of way work on a Federal-aid project.

To become qualified the local agency must first contact the **District Right of Way Local Programs Coordinator**, who then meets with the local agency's Right of Way/Real Property Department to explain State and Federal requirements. The Coordinator will request copies of organizational charts, staff resumes, duty statements, and the handbooks or procedural manuals used by the agency to conduct right of way activities.

QUALIFICATION LEVELS

The local agency can receive one of three levels of qualification which reflect the ability of the agency to perform the various right of way functions. These levels are:

- Level 1:** Staff is qualified to do functional work in one or more areas. These areas will be shown in the qualification approval. However, due to limited experience, the size of the staff or at the request of the agency, the approval is granted for only one specific project.
- Level 2:** Staff is qualified to do functional work in more than one area but not in all. There is sufficient staff available to perform the work on more than one project.
- Level 3:** Staff is qualified to do functional work in all areas and is large enough for all required review and approval activities.

QUALIFICATION TERM

Level 1 agencies must be reviewed prior to every project for the specific work to be done.

Levels 2 and **3** are granted for a three-year term. Prior to the expiration of the term, Caltrans Right of Way Local Assistance staff will contact the agency to review the agency's qualifications. This will include an inspection of some of the files on Federal-aid projects, review of the current organization chart, copies of resumes for new staff members, etc. Following this review, the qualification will be renewed, upgraded, downgraded or withdrawn.

CALTRANS AUDITS OFFICE

Caltrans Audits Office (CAO) will help evaluate a local agency before the agency is approved for qualification. This audit evaluation by CAO will cover cost accumulation, accounting procedures, and billing processes to ensure compatibility with Caltrans' fiscal system and an awareness of Federal reimbursement requirements where necessary. Follow-up reviews will be made as necessary to ensure this capability is maintained. When District Right of Way Local Programs receives a request from a local agency for prequalification, it should notify the Division of Right of Way Local Programs Branch in writing and ask that CAO perform the audit evaluation.

WITHDRAWAL OF QUALIFICATION

It is important to note that the qualification status can be withdrawn if deficiencies are found and not corrected or if the staffing and experience levels change so that the local agency can no longer meet the minimum requirements. At the time each agency is notified of its qualification level, the agency is told to inform Caltrans if there are any major personnel changes which would impact its ability to perform the respective right of way functions.

APPRAISAL REVIEW QUALIFICATION

On Federal-aid projects, a formal review of the appraisal is necessary in order to establish the Fair Market Value for the property (see 49 CFR 24.104.). The review appraiser must have a valid license issued by the State Office of Real Estate Appraisers (OREA). The review appraiser must determine that the appraisal meets applicable requirements and

make any necessary corrections or revisions. If the review appraiser is unable to recommend approval of the appraisal, the reviewer may develop additional documentation to support what is felt to be the appropriate value. The reviewer must state the basis for the value conclusion.

If the local agency receives a qualification status, Level 1 or 2, without having the staff or means to perform the appraisal review function, the local agency shall hire either a qualified licensed consultant (see below, "Local Agency Selection of Consultants") **or** another local agency qualified to perform the appraisal review function. Note: Only the local agency can determine the just compensation to be paid. Another agency or consultant cannot do so.

NON-QUALIFIED LOCAL AGENCIES--OPTIONS

Local agencies that are not qualified to perform any or all of the respective right of way functions necessary for the project must either hire another local agency which is qualified to perform those functions, or retain a consultant(s) who meets the consultant selection criteria discussed below.

In summary, non-qualified local agencies have the following choices in hiring consultants:

- Contract with a qualified local agency
- Contract with a private consultant(s) to perform one or more right of way specialties: Appraisals, Relocation Assistance, etc.
- Contract with a Right of Way Project Management consultant
- Utilize a mixture of local agency staff and the resources available above at items 1, 2 or 3
- Contract with a "Turn Key" consultant

SELECTION OF CONSULTANTS

The authority for selection of private sector consultants to perform right of way functions on Federal-aid projects has been delegated to the local agencies. The selection process will be administered by the local agency, using the Consultant Criteria and Selection Guide prepared by Caltrans to establish recommended minimum experience levels and to evaluate the qualifications of prospective consultant firms (see Exhibit 13-C). After completing the selection process and contracting with a consultant whose performance was good, the local agency would be able to utilize this same consultant to perform similar jobs without needing to repeat the selection process if no more than a two year period has elapsed.

When substantially different right of way services are needed, it is incumbent on the local agency to repeat the consultant selection process in choosing a consultant.

Competitive bidding is the cornerstone of financially successful projects. Seeking bids from qualified firms will ensure that the local agency is getting the most reasonable price. Prior to soliciting bids, careful consideration should be given to defining the scope of the consultant's work, and estimating both the cost of the consultant's contract and determining the type of contract. There are typically four kinds of contracts used: (a) actual cost plus fixed fee; (b) cost per unit of work; (c) specific rates of compensation; and (d) lump sum.

The local agency should be advised that caution must always be exercised in the choice of a consultant, particularly with regard to the firm's experience. Each project and each agency have unique demands and because the consultant may meet the broad qualifications contained in the Consultant Criteria, this does not also mean that every consultant can meet these unique demands.

The local agency is responsible for maintaining written documentation concerning the consultant selection process to ensure that the procedures comply with the consultant guidelines (Exhibit 13-C). These materials are to be made available to Caltrans as part of Caltrans' oversight/review process.

Non-qualified local agencies must diligently pursue the consultant selection process as the local agency is accountable and responsible for the actions of the consultants and/or the failure of consultants to properly execute their duties and activities in accordance with the Uniform Act. If the local agencies activities do not comply with the Uniform Act, loss of Federal funding could occur.

Also, local agencies receiving Federal funds must take affirmative steps to assure that Disadvantaged Business Enterprise (DBE) consultants have ample opportunity to compete for consultant work. Such steps include soliciting DBE firms, and when feasible, organizing the project schedule and task requirements to encourage participation by DBE firms

CONSULTANT CONTRACTS

The local agency which enters into a contract with a consultant for the performance of right of way work retains ultimate responsibility for the actions of the consultant. Caltrans has established broad criteria for use in evaluating the qualifications and selecting consultants in respective right of way functions, but Caltrans is in no way liable either for devising such criteria or for the performance of consultants chosen by the local agency. In the event the actions or performance of the consultant result in a loss of Federal funds for the project, it is the sole responsibility of the local agency to pay back these funds.

Consultants must perform right of way functions to the same standards, practices, rules and regulations as the local agency. The work products of the consultants will be monitored by the District Right of Way staff using the same guidelines discussed above in Section 13.2, "Monitoring."

The local agency responsibilities also include the following in connection with project completion:

- Approval of just compensation. In projects involving the acquisition of real property, it will be necessary for the local agency to approve the fair market value appraisal and determine what compensation is to be paid. This is a Federal requirement and cannot be delegated to the consultant.
- Assignment of a Contract Manager to serve as contact person during the course of the project. The Contract Manager should be knowledgeable in all aspects of the project (see below, "Contract Administration").
- The selection of a consultant and review of the consultant's proposal to perform the work (see Chapter 10, "Consultant Selection," of this manual).

CONTRACT ADMINISTRATION

The local agency shall designate a Contract Manager to act as the official representative of the agency with full authority and responsibility to manage the contract. In addition to the

duties listed in Chapter 10 for the Contract Manager, right of way projects also require the following:

- Performing functional review for each right of way activity
- Approving and coordinating all consultant activities
- Approving requests for payment (after completion of the work)
- Preparing interim/final contract completion reports and performance evaluations

13.3 MASTER AGREEMENT

A master agreement is required with a local agency whenever Federal funds are to be used on a local transportation project.

In the master agreement, a local agency agrees to comply with all Federal and State laws, regulations, policies and procedures relative to the design, right of way acquisition, construction and maintenance of the completed facility. It is normally processed once with the agency when it begins its first Federal-aid funded project. The Local Agency-State Master Agreements are occasionally updated and reexecuted to account for changes in laws and policies.

PROGRAM SUPPLEMENT AGREEMENT

Program Supplements to the master agreement formalize the financial responsibilities and provisions for each specific Federal-aid funded project. This program supplement identifies the reimbursable phase(s) of work in addition to the types and amounts of Federal and local funds used to finance the locally sponsored project. It is the contractual basis for the State to reimburse the local agency for work done.

Special covenants or clauses in the agreement define the agency's specific responsibilities in implementing and maintaining the project. Others define State or local responsibilities for providing project funds.

13.4 RIGHT OF WAY AUTHORIZATION

When Federal funds are to be used for right of way costs, the Field Review form and the Right of Way Estimate must be completed and the environmental document must be approved before requesting authorization. If Federal-aid is sought for any phase of the project, all right of way activities must conform to Federal requirements. Failure to conform to these requirements will jeopardize Federal funding. Also, please note: any right of way activities performed prior to authorization are normally ineligible for reimbursement later. Requests for authorization should be submitted to the DLAE. If the request is complete, the DLAE will initiate the authorization process (for additional details see Chapter 3, "Authorization," of this manual).

PROJECT PROGRAMMING

The initial step in obtaining Federal-aid on a local assistance project involves selecting and programming the project into a federally approved Transportation Improvement Program. This will require careful estimates of the costs involved for all phases of the project including preliminary and construction engineering, utility relocation, right of way (if additional property interests are required) and construction.

Real property rights that are acquired for a local agency project must be sufficient for all activities necessary for the construction of the project and for the ongoing operation and maintenance of the facility when completed. It is the responsibility of the local agency to determine the property rights that will be necessary for each project and that these rights are sufficient for the project.

Procedures to program projects can be found in Chapter 1, “Introduction and Overview,” and Chapter 2, “Financing the Federal-aid Highway Program,” in the *Local Assistance Program Guidelines*. Questions concerning project programming should be referred to the DLAE.

REQUEST FOR AUTHORIZATION TO PROCEED

After a project is selected and programmed in an FHWA-approved statewide Transportation Improvement Program (FSTIP), the local agency should then contact the Caltrans DLAE to obtain authorization to receive Federal funds. The authorization must precede any activities for which reimbursement will be requested. When the project requires the relocation of utility facilities, the request must include a listing of each affected utility company together with an estimate of the cost of relocation for each company and a request for approval of the use of the Alternate Procedure. The local agency is responsible for initiating the Request for Authorization (Preliminary Engineering) through Caltrans to FHWA. For additional details, please refer to Chapter 3, “Project Authorization,” of this manual.

The project authorization obligates FHWA to reimburse allowable project costs and confirms that Federal funds are available in the amount requested for that project. However, this is subject to the condition that acquisition of right of way may only commence after the necessary requirements have been met, including environmental clearance.

The local agency must prepare a “**Request for Authorization**” package (see Chapter 3, Exhibits 3-A through 3-D of this manual) and certify to the accuracy of all the data on the forms. Separate work authorizations and fund obligations are normally made for preliminary engineering, right of way, and construction if Federal funds are to be used for these phases of the project. The authorization to proceed must be obtained prior to starting an item of work for which the agency will seek reimbursement.

The Request for Authorization is submitted electronically to FHWA through the “Federal-Aid Data System” (FADS). When the DLAE determines that the project has been authorized and obligated, an “Authorization to Proceed” is printed which shows the authorization and obligation dates. This form is then sent to the local agency as verification that they may begin with that phase of the project and subsequently be eligible for reimbursement. If the project cannot be authorized, the local agency is informed and advised what corrective actions are necessary.

AUTHORIZATION TO BEGIN RIGHT OF WAY WORK (E-76)

Each phase (capital/support) or function (appraisals, acquisition, utility relocation, etc.) of right of way claimed for reimbursement must be programmed and authorized by an E-76 prior to beginning that phase or function. An E-76 may program multiple phases.

Before obtaining authorization for appraisal activities, the project should have environmental clearance. However, authorization can be obtained without environmental clearance if the following are completed:

- The draft EIS has been circulated
- The public hearing process is complete
- The project is non-controversial
- A preferred alternative was selected

Only under exceptional circumstances will the agency be allowed to acquire property prior to environmental clearance. For example, the agency may acquire property in advance of the normal schedule if the owner claims hardship or the property must be protected from future development. Appropriate documentation must accompany the request to FHWA for approval of advance acquisition. When making advance acquisitions, ensure that the intent of the Uniform Act and the environmental process are not circumvented.

13.5 PRELIMINARY RIGHT OF WAY ACTIVITIES

REQUEST AUTHORIZATION TO PROCEED (PE)

Separate work authorizations and fund obligations are normally made for preliminary engineering (PE), right of way (including utilities) and construction phases if Federal funds are to be used in each of these phases. For preliminary and construction engineering, only eligible work performed after the authorization date may be reimbursed. Preliminary engineering work may be authorized prior to the Field Review. (For additional details see Chapter 7 of this manual). This will allow reimbursement for consultants or other specialists who may be needed to complete the Field Review. Preliminary engineering must lead to a construction project in a timely manner.

In the event that right-of-way acquisition for, or actual construction of a road for which this preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the Department will be required to repay the FHWA the sum or sums of Federal funds paid to the highway agency under the terms of the agreement.

PRELIMINARY STUDIES

At this early stage in the development process, it is crucial to correctly evaluate the project requirements, i.e., the limits, location (including existing utilities), scope, costs, and whether any additional right of way will be required. Each agency should establish a process for accumulating this data which will play an integral part in successfully completing the Field Review, environmental documents and the Plans, Specifications and Estimates (PS&E) for the project.

FIELD REVIEWS

Formal field reviews, which may include FHWA and Caltrans representatives, are not required on local agency transportation projects **off** of the National Highway System (NHS) (for additional details, see Chapter 2, “Roles and Responsibilities,” of this manual). However, field reviews are a suggested practice for all complex projects. A representative from FHWA should be consulted for all projects that are not exempt from FHWA oversight. All requests for FHWA participation should be coordinated through the DLAE.

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The Field Review form must be completed by the local agency for all Federal-aid projects prior to approval of the environmental document. If it appears that additional right of way will be required, one of the intended results of the field review is to provide sufficient data to complete the right of way estimate (see “Right of Way Estimate” in this chapter). The information contained in these two documents is crucial in obtaining FHWA authorization to proceed further with the next stage of the project (see “Request for Authorization to Proceed Right of Way” in this chapter).

The Field Review process brings together all interested parties in order to reach agreement on the important aspects of the project, including such items as the design features, alternative proposals for building the project, respective responsibilities of the various agencies involved, level of environmental document required, whether public hearings will be necessary, and, when right of way acquisition is necessary, the project scheduling if there is displacement, particularly when utility and railroad relocations are required. Caltrans Right of Way personnel will only participate in field reviews upon specific request and subject to personnel availability.

When the preliminary review is completed, the local agency is responsible for completing the Field Review form and providing any additional information needed for right of way or utility work. For NHS projects, all appropriate forms and attachments must be completed. For non-NHS projects, the two-page Field Review summary must be completed at a minimum. Items 7 and 9 apply to right of way issues (see Chapter 7, “Field Review” of this manual).

13.6 ENVIRONMENTAL APPROVAL

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

On local federally funded transportation projects, the environmental clearance procedure must comply fully with the provisions of the National Environmental Policy Act (NEPA). Local agencies should not proceed with final design, right of way acquisition, nor any construction phases of their project until full compliance with the NEPA requirements has been documented and approved by FHWA, or in the case of a Programmatic CE, the DLAE.

The level of environmental analysis varies with each project. A proposed major highway or a new highway on a different alignment will normally require an extensive study (an Environmental Impact Statement), while minor improvements to existing highways such as a roadway intersection signal installation may require only a short analysis (a Categorical Exclusion).

All local agency projects must demonstrate compliance with NEPA and other Federal environmental laws before proceeding with right of way work or the final design of a project.

ENVIRONMENTAL REVIEW--PES

The Preliminary Environmental Study (PES Form, see Chapter 6, Exhibit 6-A) is designed to identify such items as the existing conditions in the project area, environmental issues which may require further study or public hearings (see below, “Public Hearings”), whether additional right of way is required, and the respective responsibilities of the public agencies whose permits and approvals are necessary. Questions A 22 and 23 of the

PES Form specifically relate to right of way impacts and a “YES” answer would indicate that further action is necessary.

PUBLIC HEARINGS

In general, public hearings should be held for a project if there is substantial environmental controversy, if there is wide spread interest in holding the hearing or if an agency with jurisdiction over the project requests one. The procedures for holding hearings, including the requirements for notifying the public, the contents of the notification, scheduling, and the hearing process are all discussed in Chapter 8, “Public Hearings” in this manual.

Federal regulations require public hearings under certain circumstances. For example, projects being processed with an Environmental Assessment require a public hearing when significant amounts of right of way will be required for the project. Public hearings are also required during the circulation period of all Draft Environmental Impact Statements (EIS).

Public involvement is advantageous because it can broaden the agency’s knowledge of the project area. If a public hearing is to be held and additional right of way or property rights will be required for the project, right of way personnel should be involved as early as possible. A public forum offers an excellent opportunity to discuss the acquisition and relocation impacts with the affected persons. The importance of explaining these projects within the context of a public hearing cannot be overstated. One of the most difficult aspects of any project is the displacement of people and/or personal property. Property owners rarely see the importance of a project when balanced against their own needs and desires. Often the project simply means the disruption of their lives and lifestyle or the need to relocate and reestablish their residence or business in a new area. As a result, those most directly affected are often hostile and unwilling to reach any agreement on an amicable basis.

The public hearing is often their first real opportunity for information and contact with project representatives. One of the keys to a successful project may be the cooperation engendered at the first public hearing. As the project progresses, there may be a need for additional hearings devoted solely to right of way issues and impacts.

THE ENVIRONMENTAL DOCUMENT

The primary purpose of the environmental review process is to ensure that environmental objectives are considered in the project development process. This process leads to the final environmental document and is the basis for subsequent decisions to undertake any actions necessary to avoid or at least minimize adverse impacts. The preliminary study process is discussed in Chapter 6, “Environmental Procedures” of this manual. Detailed procedures for preparing the different environmental documents such as a Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS) are each contained in the *Local Programs Manual, Volume III*. Specific instructions for preparing other Federal environmental documents such as Section 4(f), Section 106, Section 7, E.O. 11990 and E. O. 11988 are also contained in Volume III.

13.7 PROJECTS REQUIRING RIGHT OF WAY/PROPERTY RIGHTS

Local federally-funded projects involving the acquisition of right of way should be discussed with the District Local Programs Right of Way Coordinator as early as possible in the project development stage. There are several reasons for this. As noted above, while some preliminary engineering activities and cost estimates can be conducted and subsequently reimbursed by FHWA, this is not true for the majority of right of way activities (e.g., negotiating with property owners and utility relocation). This right of way work cannot be performed on Federal-aid projects unless the environmental processes have been completed, including the public hearing requirements. This will avoid allegations of early acquisitions predetermining the proposed project location. Only right of way activities relating to the environmental process (e.g., relocation impact documents, public hearings, general data collection for estimates, preliminary appraisals and negotiations with property owners) can be conducted without jeopardizing future Federal-aid participation.

THE RIGHT OF WAY ESTIMATE

If property rights are necessary, the next phase in the project development is the completion of the Right of Way Estimate. The estimate is of primary importance in the cost-efficient delivery of the project. This process and subsequent document provide a detailed analysis of the following:

- Type of properties to be acquired
- The size and number of the parcels
- If displacement is to occur, what is the nature (e.g., residential, commercial, etc.), how many are affected and what is the projected timing
- How much time and what personnel are needed to appraise and acquire the right of way and perform any necessary relocation work, including utilities
- Any liability for utility relocations

The Estimate should include:

- The estimated fair market value of the properties to be acquired
- The anticipated relocation assistance payments
- The portion of the local agency's liability to relocate utility facilities outside of the right of way

An accurate estimate of right of way costs based on current market data is essential for forecasting capital expenditures and future staffing needs. For example, overestimating may result in deferring, down-scoping, or eliminating a project; underestimating could affect the financial ability to build the project or inadequate staffing needs. Subject to personnel availability, the District Right of Way staff may assist the local agency in preparing and reviewing the estimate documents.

Rough estimates are often prepared during the preliminary phase of a project. However, these estimates should be updated prior to use in a budgeting or programming document. Maps should be available once the project scope is defined. Detailed maps are critical in preparing good right of way estimates.

ADVANCE ACQUISITION/HARDSHIP/PROTECTION

It occasionally becomes necessary for varying reasons to acquire properties prior to obtaining FHWA environmental approval and authorization for the project. These acquisitions are referred to as “hardship” or “protection.” Hardship acquisitions are situations where unusual circumstances have befallen the owner(s) of the property and are aggravated or perpetuated because of the proposed project and cannot be solved by the owner without acquisition by the local agency.

“Protection” acquisitions occur when property is purchased in advance of normal acquisition to prevent development on a proposed alignment. If the purchase is deferred, the result would be higher acquisition, relocation and/or construction costs. Local agencies may acquire hardship and protection properties with their own funds without jeopardizing Federal participation in future programmed project costs. These advance acquisitions require prior FHWA approval and any such acquisition must comply with the Uniform Act if the local agency anticipates seeking reimbursement for the acquisition costs, when the project is approved for Federal Aid. The local agency should immediately contact the District Right of Way Local Programs Coordinator before proceeding with any acquisition.

RELOCATION PLANNING

When projects involve displacement, the successful resolution of these displacees’ needs requires careful planning. Housing resources must meet the needs of the displaced in terms of size, price, location and timely availability. Advisory services and various notices to vacate, some with specific timing requirements, must be provided. Businesses must be given assistance in relocating with a minimum of disruption during the move. Payments must be made to displaced persons at the time they are needed during the move to the new location. These things do not happen automatically; they require planning.

FHWA has long stressed the need for relocation planning. Congress gave new emphasis to the need for consideration of the impacts of displacement in the 1987 Amendment to the Uniform Act. Section 205 (a) of the Amendment states in part that, “Programs or projects undertaken with Federal funding shall be planned in a manner that (1) recognizes at an early stage the problems associated with the displacement of individuals, families, and farm operations and; (2) provides for the resolution of such problems in order to minimize the adverse impacts on the displaced persons.”

If there is to be displacement, planning for the relocation should begin with the design for the project and the local agency’s Right of Way staff or consultants should be involved from the outset. The earlier that relocation problems are identified, the easier it will be to minimize adverse impacts on displacees. The information obtained in the planning process will form the basis for the actions which must subsequently be taken during the actual relocation.

RAILROAD OPERATING FACILITIES

Railroad companies determine which of their facilities are “operating” or “nonoperating.” The operating facilities can be “affected” by a construction project in several ways, each of which require different processing. Because of the time required to reach agreement with the respective railroad companies and because of the complexities involved with these agreements, special care should be given to any project where railroad involvement is possible.

TEMPORARY RESIDENTIAL RELOCATION/NIGHTTIME CONSTRUCTION

As part of the relocation planning, consideration should be given to the proposed hours of construction for the project. Some construction may be carried out 24 hours a day. If so, residents in close proximity to the project can be adversely affected when there are unusually high nighttime noise levels at the construction area.

As discussed above, the Uniform Act established a philosophy that people affected by Federal-projects are to be treated fairly and consistently. This approach has been extended to include reimbursement, as part of the construction costs, for temporary relocation expenses caused by night construction work. The reimbursement will include payment for motel costs (plus taxes) for the nights when the high noise levels are anticipated.

The procedures for making these payments either to the temporary displacee or directly to the motel have been established. These procedures are found in Chapter 16, "Construction Administration," of this manual.

13.8 APPRAISALS

The Federal Uniform Act contains basic requirements for the appraisal of real property acquired for public purposes. These basic requirements apply to all Federal-aid projects. For additional detail, refer to 49 CFR 24.102, 103 and 104, the FHWA Right of Way *Project Development Guide*, Chapter 8 and the Caltrans *Right of Way Manual*, Chapter 7, "Appraisals."

PREPARE FINAL RIGHT OF WAY REQUIREMENTS/APPRaisal MAPS

Before commencing appraisal activities, the final right of way or appraisal maps must be completed. The appraisal report, when completed, should contain additional diagrams, sketches or maps as necessary to understand the property valuation. Significant topography maps should be included for partial acquisitions. The appraiser is responsible for the completeness of the maps and for requesting delineation of pertinent data including, in particular, the area of the taking and any remainder parcels.

APPRAISE RIGHT OF WAY, DETERMINE FAIR MARKET VALUE

Prior to commencing appraisal work on parcels required for the project, the appraiser must advise the property owner of the decision to appraise the property. The notice must be in writing and contain the following:

- The specific area required for the public use
- The fact that the owner's property lies within the area to be acquired

The letter must offer the owner or the owner's representative the opportunity to accompany the appraiser on an inspection of the property. Reasonable advance notice should be given prior to the inspection. The owner should also be given a written explanation of the agency's land acquisition procedures. FHWA publishes a booklet entitled "Your Property, Your Transportation Project" which will satisfy this requirement.

All real property shall be appraised before the initiation of negotiations with the owner and the acquiring agency shall establish an amount it believes to be “**Just Compensation.**” Although Just Compensation is normally defined as the **Fair Market Value**, the two amounts may differ because of unusual circumstances. The Fair Market Value is defined as “the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.”

APPRAISAL REVIEW

As noted above, on Federal-aid projects, a formal review of the appraisal is necessary (see 49 CFR 24.104.). The review appraiser must have a valid license issued by the State Office of Real Estate Appraisers (OREA). The review appraiser must determine whether the appraisal meets applicable requirements and make any necessary corrections or revisions.

If the review appraiser is unable to recommend approval of the appraisal, the reviewer may develop additional documentation to support what is felt to be the appropriate value. The reviewer must state the basis for the value conclusion. It is important to remember that only the local agency can establish the fair market value. Another agency or a consultant cannot do so.

APPRAISAL NOT REQUIRED

When the local agency determines that the valuation problem is uncomplicated and the market value is estimated at \$2,500 or less, based on a review of available data, a formal appraisal report is not required. The \$2,500 amount includes any damages to the remainder property but excludes any nonsubstantial construction contract work. This information is consistent with Sec. 49 CFR 24.102 (c) 2.

SEPARATION OF APPRAISAL AND ACQUISITION FUNCTIONS

Local agencies should maintain a separation of the appraisal and acquisition functions, except that the same person can appraise and acquire a parcel if the total valuation is \$10,000 or less. This dollar limit also applies to appraisal revisions where the appraiser was previously assigned to negotiate the parcel.

When the same person prepares the appraisal and does the acquisition, the appraisal should contain a statement substantially as follows: “I understand that I may be assigned as the Acquisition Agent for one or more parcels contained in this Report but this has not affected my professional judgment nor influenced my opinion of value.”

For additional details, refer to Section 7, “Appraisals,” in the Caltrans *Right of Way Manual*.

DUAL APPRAISAL REQUIREMENTS

Caltrans and FHWA require dual appraisal reports for unusually complicated parcels or parcels exceeding \$500,000 in value. This amount includes improvements pertaining to reality, severance damages, and construction contract work. This is to ensure that the

owner receives a fair market value offer and that large or complicated appraisals are documented and conclusions supported.

Dual appraisals shall be separate and fully independent in calculations, analysis and conclusions. This will give a better basis for determining market value and help ensure a sound offer. The appraisers and their supervisors are responsible for maintaining the fact, spirit, and appearance of this independence.

Exceptions to this policy are appropriate in specific instances when the safeguards are demonstrated as unnecessary.

WAIVER OF DUAL APPRAISAL

Waiver of dual appraisals will only be approved for relatively simple appraisals with adequate supporting data for the value conclusions and ordinarily will not be approved on very high valued parcels.

13.9 RIGHT OF WAY ACQUISITION

The Uniform Act also contains basic requirements for the acquisition of real property which apply to all projects. For additional details, refer to 49 CFR Part 24, the FHWA *Project Development Guide*, Chapter 9 “Acquisition,” and to the Caltrans *Right of Way Manual*, Chapter 8, “Acquisition.”

Prior to initiating negotiations for the acquisition of real property, the agency must establish an amount it believes to be just compensation and must make a written offer to the owner(s) to acquire the property for the amount so established. The agency should make every effort to acquire the property by negotiation. Any increase or decrease in the value of the property to be acquired prior to the date of valuation caused by the transportation project shall be disregarded in determining the compensation for the property. The agency shall provide the owner(s) with a written statement explaining the basis for the amount it establishes as just compensation.

The acquisition agent is responsible for securing all property rights necessary to certify the project (see below, “Right of Way Certifications”).

Please Note: If a private sector consultant is used in the acquisition phase, the consultant must have a valid California Real Estate Broker’s license.

The Uniform Act requirements, in general, are as follows:

- A written appraisal establishing just compensation must be approved prior to the initiation of negotiations.
- The written offer must be made promptly in the full amount of the appraisal and contain a summary for its basis.
- A 90-day notice must be given to all lawful occupants.
- The owner’s incidental escrow cost must be paid.
- A written diary must be maintained.

CONDEMNATION / EMINENT DOMAIN

Eminent Domain is the inherent power of government to acquire property for public use. The Fifth and Fourteenth Amendments to the U.S. Constitution and Article I of the California Constitution provide that such private property shall not be taken without just compensation. Condemnation is the legal proceeding by which the power of eminent domain is exercised.

Public agencies may condemn private property provided that the governing body (e.g., the Board of Supervisors, City Council, etc.) adopts a Resolution of Necessity at a public hearing. The owner(s) must be provided advance notice of the hearing. If the owner(s) believe that their property should not be required, they have the right to appear at the hearing and contest the adoption of the Resolution of Necessity.

Great care must be taken in the exercise of the power of eminent domain. The process is discussed in detail in the Caltrans *Right of Way Manual*, Chapter 9.

RELOCATION ASSISTANCE

The Uniform Act also contains basic requirements when displacement occurs as a result of the transportation project. These requirements are found at 49 CFR 24 Subparts C, D and E. The relocation procedures are also discussed in detail in the FHWA *Project Development Guide*, Chapter 10 and the Caltrans *Right of Way Manual*, Chapter 10, "Relocation Assistance."

The purpose of the Uniform Act is to assure fair and equitable treatment of displaced persons so that such persons do not suffer disproportionate injury from projects designed to benefit the public as a whole. It is important to understand that successful relocation is essential not only to those displaced but to the progress of the entire highway project.

While the local agency needs information about any displacement which will occur because of the project, the displaced persons have an equal or greater need for information about the benefits, the eligibility requirements to obtain these benefits, and the appeal process in the events these benefits are denied. FHWA has prepared a broadly written brochure entitled "*Your Rights and Benefits as a Displaced Person.*" The brochure explains these matters and is intended to be used by relocation agents and at public hearings. Copies are available from the Caltrans District Right of Way Coordinator. In addition, FHWA has also prepared a more specific explanation of these benefits and the requirements to obtain them. This summary should minimize any disruption caused by the move and maximize the likelihood of a successful relocation. A copy of this summary is provided as Exhibit 13-D, "Relocation Assistance Summary."

GENERAL REQUIREMENTS

The relocation agents and any private sector consultants should meet the selection criteria found in Exhibit 13-C.

The relocation activities should be coordinated with both the appraisal and acquisition functions.

It is crucial to ensure that:

- Timely calls are made
- Proper entitlements and advisory services are provided
- RAP payments are timely and properly calculated
- The appeal process is communicated to the displacees
- Diaries are maintained
- All notices (Eligibility, Vacate, Entitlement, etc.) are timely

PROPERTY MANAGEMENT

Property management includes the administration of property acquired for transportation projects so that the public interest is best served. FHWA regulations for the property management function are found in 23 CFR Parts 701 and 713. These policies and procedures apply to all real property acquired by local agencies in connection with projects where Federal funds participate in any of the right of way costs for the project. FHWA may participate in the net costs incurred in leasing, rental, maintenance, the disposal of improvements and the clearance of the property. For additional details, refer to the *Caltrans Right of Way Manual*, Chapter 11, "Property Management."

The management and administration of acquired property includes:

- An inventory of all improvements acquired as part of the right of way
- An accounting of the property management expenses and the rental payments received; and
- An accounting of the disposition of improvements and the salvage payments received

SPECIAL REQUIREMENTS

If property management services are provided by a private consultant, the firm must have a valid California Real Estate Broker's license.

Former owners and tenants subject to termination by the local agency on short notice will not be charged more than fair market rents.

EXCESS LANDS (ACQUISITION AND DISPOSAL)

The regulations covering acquisition and disposal are found in 23 CFR Part 713.305 and 771.117. The FHWA will receive its share of the proceeds from the sale. For additional details, refer to the discussion below in Section 13-11, "Federal Policies."

13.10 RIGHT OF WAY CERTIFICATION

Certification is necessary before a project can proceed to construction. The purpose of the right of way certification is to document that any interests necessary for the project have been, or are being secured and physical obstructions including utilities and railroads have been, or will be removed, relocated or protected as required for construction, operation and maintenance of the proposed project. The certification also documents that right of way activities including the relocation of any displacees were conducted in accordance with applicable laws and regulations.

CERTIFICATION FORMS

A separate right of way certification must be completed by local agencies for each local assistance project even if no right of way is required for the project. All certifications should be prepared using forms specified by Caltrans (see Exhibits 13-A and 13-B). On the Right of Way Certification form, the local agency should use only the portions applicable to the project being certified. The No Right of Way Certification should be completed in its entirety.

PROJECT CERTIFICATION---NO ADDITIONAL RIGHT OF WAY REQUIRED

If it is evident during the early stages that no additional property rights or right of way are required, the local agency can then proceed with the next stage in the project development procedure which is certifying to Caltrans that no right of way is required. This is accomplished with a "No Right of Way Certification" (Exhibit 13-A) which is completed in duplicate, signed by an authorized official, or a designated alternate, from the local agency and forwarded to the DLAE for acceptance.

It is important to remind local agencies that only authorized officials may execute Certifications. Section 906.13.10 of the Caltrans *Right of Way Local Program Manual* states in part that the Local Public Agency "...may execute a resolution giving (a responsible agency official) blanket authority to execute all Certifications..." This is intended to streamline the process and avoid the necessity to have the execution of each individual Certification authorized by an agency resolution. If the continuing resolution of authority option is chosen, each Certification should be accompanied by a statement from the Local Public Agency that the Certification has been executed by an official or designated alternate pursuant to a resolution authorizing this official to do so.

Note: All questions on the No Right of Way Certification should be answered "NO." If any questions are answered "YES," the use of the form is inappropriate and the form should be returned to the local agency with instructions to use the longer Right of Way Certification form which is intended for use in dealing with right of way matters.

ACCEPTANCE OF THE NO RIGHT OF WAY CERTIFICATION

The DLAE will review the No Right of Way Certification form. If no additional property rights are required, the local agency has answered "NO" to all the questions and the form is otherwise correctly completed, the DLAE will accept the certification on behalf of Caltrans and one of the signed duplicate originals will be returned to the local agency.

UTILITY RELOCATION

Local agency transportation projects often involve utility relocation. The cost of relocating these utilities, whether they are publicly or privately owned, is a reimbursable project expense, provided it can be demonstrated that the relocation is necessary because of the project and that the local agency is obligated to pay these costs. The relocation may be performed during either the right of way or construction phase. Federal regulations are specific about facilities occupying the right of way on Federal-aid projects regardless of who pays the relocation costs. For additional details refer to Chapter 14, "Utility Facilities," of this manual.

Note: On projects where the sole right of way involvement is with utilities and the utilities are owned by the sponsoring local agency, or where a liability determination has been established that the utilities are in place under a franchise agreement, the project may be certified using the No Right of Way Certification. In the first case, when the utilities are owned by the local agency, that agency should be better able to coordinate with its own utility unit to relocate their facilities. In the second case, where the local agency has “prior rights” and the utilities are in place under a franchise agreement, the risk is minimized by the nature of the franchise agreements between the utility company and the local agency.

PROJECT CERTIFICATION--RIGHT OF WAY REQUIRED

When additional property rights are required for a local Federal-aid project, it is necessary for the agency to certify that these rights were acquired in conformance with the Uniform Act.

All local agencies may certify their own projects, but it is of crucial importance to adhere to FHWA standards so that any State or Federal funds to be used for the project are not jeopardized. This emphasizes the gravity for non-qualified local agencies in the selection of qualified consultants or in contracting with a qualified local agency to perform the respective right of way functions for them.

LEVELS OF CERTIFICATION

There are several levels and variations of Certification which are discussed below.

Certification No. 1

The certification documents the following:

- All the work is within existing right of way acquired for a previous construction project and all new work will be within that existing right of way, OR
- Acquisitions are complete (escrow's closed and/or final orders of condemnation recorded)

AND/OR

- There are effective Orders of Possession on all remaining unacquired parcels
- All rights of way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (utility notices, demolition contracts, railroad contracts) for it to be undertaken and completed as required for proper coordination with the physical construction schedules

AND

- All occupants have vacated the lands and improvements
- All necessary material and/or disposal sites have been secured
- Relocation Assistance and payment requirements have been met

Certification No. 2

This level of certification documents the following:

All the requirements of Certification No. 1 except that one or more parcels are in the agency's possession by virtue of effective Rights of Entry or similar documents (permit, license, right of way contract) with an effective right of possession clause (see limitations on use of “Rights of Entry” contained in Section 13.12 of this chapter).

Certification No. 3

This level of certification documents the following:

- All requirements are the same as for Certification No. 1 except legal possession or right of occupancy and use of a few remaining parcels are not complete. A No. 3 Certification may only be used in an exceptional circumstance and on a limited basis. It must be accompanied by a full justification. At a minimum the justification must include the following:
 1. An outline of the very unusual circumstances that require early advertisement
 2. A statement how and/or why it is believed to be in the public's interest
 3. A statement that there is a Resolution of Necessity on all parcels yet to be acquired
 4. The reason why a Certification No. 1 or No. 2 is not possible
 5. A realistic date when physical occupancy and use is anticipated, and substantiation that such date can be met

CERTIFICATION NO. 3 WITH A WORK-AROUND (3W)

This level of certification will allow physical construction of a project to commence by “working around” any occupants of businesses, farms, etc. remaining within the right of way area. The Certification No. 3 with a Work-Around (3W) is to be used on extremely rare occasions. It must be completed in a timely manner and with proper and complete documentation and justification. Should the local agency anticipate a need to certify the right of way for a project under this type of certification, the District Right of Way Coordinator should be contacted as soon as the circumstances are confirmed during the PS&E stage.

TIME REQUIREMENTS FOR RIGHT OF WAY CERTIFICATIONS

Under ideal conditions, a Certification No. 1 would be completed for each project at the PS&E stage. Because this is not always possible, the lower levels of certification allow projects to proceed within limitations while the remaining necessary rights are acquired. All certifications must be raised to the Certification No. 1 or Certification No. 2 level prior to the award of the construction contract.

The local agency must transmit all Certifications to the DLAE for all Federal-aid projects along with the Request for Authorization. In those cases when a project advances to advertising on a Certification No. 3, a Certification No. 1 or No. 2 must be received by the DLAE prior to the bid opening date. In the rare cases where a Certification No. 3W is used, it must also be received no later than three months prior to bid opening.

13.11 EMERGENCY RELIEF PROJECT CERTIFICATION

EMERGENCY REOPENING PHASE

Emergencies require rapid response. After a situation has officially been proclaimed an emergency, actions will often be taken to reopen facilities without going through the usual right of way steps. After the facility has been reopened, the emergency actions must be reviewed for right of way implications. If any persons or properties were affected during the repairs, even temporarily, appropriate steps must be taken to determine and provide

any compensation that is due. This may include appraisal and purchase of property rights, relocation assistance, etc.

Following the review and any indicated subsequent actions, either a No Right of Way Certification or a Right of Way Certification must be prepared for each project within 180 days of the date of emergency proclamation and submitted for review and acceptance as described previously.

RESTORATION PHASE

Once the facility has been reopened and the emergency is over, any further work to restore or improve the facility is no longer exempted from the requirements for certification prior to advertising, obtaining bids, etc. Restoration projects shall follow the procedures outlined in this chapter (see Chapter 11, "Disaster Assistance," in the *Local Assistance Program Guidelines*).

13.12 RIGHT OF WAY CERTIFICATION FORM--DISCUSSION

In order to assist the local agency in completing the certification form, the following explanations are provided for each of the items which appear on the certification.

STATUS OF REQUIRED RIGHT OF WAY

All property rights required for a project must be included in the Right of Way Certification. This includes any interests in real property that lay outside of the existing right of way boundary lines, as well as regular parcels acquired by deed, final orders in condemnation and orders for possession. It also includes temporary interests such as rights of entry (see below, "Rights of Entry"), construction or access easements, permits to enter during construction, licenses, etc. It is important to include the expiration date of any temporary rights in the Certification, so they may be evaluated in terms of the construction schedule.

RIGHTS OF ENTRY

A Right of Entry allows an agency representative to enter someone else's property for a specific purpose at a specified time. Obtaining a Right of Entry can require that the agency pay just compensation at the time agency takes possession. A Right of Entry does not replace the Right of Way Contract. It can, however, be used to certify control of the right of way for the project.

The local agency must first have an appraisal of the property rights prepared and present an offer of settlement to the owner. The Right of Entry will not be utilized if the project will displace people or impact improvements of a significant nature. A Right of Entry is appropriate only when the local agency would normally acquire the needed interest, but the owner cannot or will not provide an executed right of way contract and eminent domain proceedings are not the practical approach. It is used only in extraordinary circumstances and can never be used for the sole reason of meeting the scheduled certification date.

FHWA is extremely concerned with the over use of Rights of Entry. The local agency should contact the District Right of Way Local Programs Coordinator to ensure the intended use of the Right of Entry will not violate Federal/State law nor jeopardize the project's Federal funding.

STATUS OF ACCESS CONTROL

Access to the project must be adequate to meet the needs during construction. At the same time, access rights for persons whose property abuts on the project boundaries cannot be denied or unreasonably restricted unless other access is available or provided to the owner during construction. If no access can be provided, the owner is entitled to compensation during the course of construction.

STATUS OF AFFECTED RAILROAD OPERATING FACILITIES

The local public agency must confirm that satisfactory arrangements have been made with the railroad. If no operating right of way is involved, this should be noted. Railroads are considered clear for advertising when arrangements have been made with the railroad for entry on their property and for working on or near the tracks, usually in a Construction and Maintenance Agreement.

MATERIAL AND DISPOSAL SITES

When projects involve the excavation or importation of soils and other materials to or from a material and/or disposal site, separate agreements providing for the use of the sites, the owner's name, and the duration of the agreement must be listed.

Note: Typically, on local public agency projects, there is excess material which the contractor disposes of as part of the contract. The disposal site is not a project need. Under these circumstances, in completing the No Right of Way Certification, the "NO" column should be checked. Only when a separate disposal site is necessary as a part of the project should the "YES" answer be given.

UTILITY RELOCATION

It is the local agency's responsibility to provide for the relocation, protection or removal of all private and public utilities which conflict with the construction of the proposed project. It is necessary to reach agreement concerning; (1) the date by which the relocation will be completed; (2) the financial liability for the relocation costs with each of the utility companies having facilities within the project area or that are affected in some way by the project; and (3) who will perform the relocations.

Note: Federal participation in the utility relocation costs is a right of way issue and not a construction matter, even if the relocation will occur during construction.

RIGHT OF WAY CLEARANCE

The preliminary investigations including the field review will reveal the presence of any improvements or physical obstructions which must be removed prior to construction. If there are, care should be taken in arranging for the removal of these items in order to properly coordinate with the construction schedule.

AIRSPACE AGREEMENTS

Airspace leases are revenue-producing agreements for parcels within (above or below) the

operating right of way. When subsequent projects are proposed which affect the airspace leasehold areas or pose a problem for the lessee's use of the site, provision must be made in the contract to minimize this conflict. If airspace leasehold area is required for the project, the lease must be canceled and arrangements for the lessee's relocation must be made prior to certifying the project.

COMPLIANCE WITH THE RELOCATION ASSISTANCE PROGRAM

The Uniform Act prescribes certain benefits and protections for persons displaced by local projects which are funded in whole or in part with Federal money. Among other benefits the Uniform Act provides are relocation payments for residential displacees and for businesses, farms, and non-profit organizations. The Act also provides certain protections such as requiring the availability of replacement housing for residential displacees, minimum standards for such housing, and assurances that displacees have sufficient time in which to choose their replacement properties. Finally, the Act provides for certain "advisory services" for displacees. Each of these legal requirements must be satisfied and then addressed in the Right of Way Certification.

COOPERATIVE AGREEMENTS

Cooperative Agreements are defined as any formal agreement between Caltrans and a local agency for a project on the State Highway System wherein the parties share in the development activities. If there are Cooperative Agreements covering responsibilities or obligations for the respective portions of the project, these agreements must be listed on the certification form.

ENVIRONMENTAL MITIGATION

When an environmental document indicates that mitigation is required, these mitigation measures must be listed on the Certification form, including the date by which any the purchase of any environmental parcels will be completed. For example, while wetland and floodplain impacts are mainly the responsibility of the project engineering and environmental personnel, the mitigation measures may require right of way involvement in the acquisition of replacement wetlands. These parcels must be identified. It is important for the Right of Way staff to work closely with their engineering and environmental counterparts.

ACCEPTANCE OF RIGHT OF WAY CERTIFICATION

When there are right of way issues involved, the local agency will certify that the issues have been resolved. Because local agencies are now certifying their own projects, it should be stressed that the authorized official or designated alternate executing the Certification must be certain that the proper right of way procedures have been followed and that the requirements of the Uniform Act have been met.

All local agencies may certify their own projects but it is of crucial importance to adhere to Federal standards so that the Federal funds for the project will not be jeopardized. This emphasizes the gravity for nonqualified agencies in the selection of qualified consultants or in contracting with a qualified agency to perform the respective right of way functions.

Upon receipt, the District Right of Way Coordinator will review the certification to see that each item has been completed in compliance with Federal and State laws and regulations and, if applicable, the date by which the right of way will be cleared. If all of the right of way issues have been dealt with in a satisfactory manner, both duplicate originals will be accepted and a signed original copy will be returned to the local agency.

If there are irregularities in the certification and it cannot be accepted as submitted, the Right of Way Coordinator will return the certification to the local agency with an explanation as to why it cannot be accepted and the steps that are necessary for acceptance.

Certifications 1 and 2 will be accepted in the district. Certifications 3 and 3Ws will be forwarded to Caltrans headquarters for review and approval.

13.13 REIMBURSEMENT/FISCAL POLICY

PURPOSE

This section contains critical requirements and basic principles relating to the eligibility of Right of Way transactions for Federal reimbursement. From this overview, the local agency should be able to understand the overall Federal and State requirements. Detailed procedures are found in Chapter 5, "Accounting," of this manual.

REIMBURSEMENT PROCESS OVERVIEW--CALTRANS

Caltrans receives FHWA funds on a reimbursement basis. This means Caltrans must first obtain Authorization to Proceed (E-76), incur costs, and bill the FHWA for payment before receiving payment. Federal funds are received by Caltrans as reimbursement for federally eligible expenditures.

As noted above, the normal sequence of events to obtain prior Federal Authorization and reimbursement through Caltrans is:

- A. Obtain authorization to begin work. Federal authorization is gained by obtaining an E-76, "Approval to Proceed" which means funding is available. Only eligible expenditures incurred for work after the date FHWA approves the request are reimbursable.
- B. Reimbursement is limited to the amount shown on the E-76. However, the amount can be revised. If necessary, execute a revised E-76 with FHWA. The revised E-76 is used to increase or decrease the Federal funding limit shown on previous agreements.
- C. Submit progress payment invoices during the course of the work and a final invoice upon completion, along with the other documents discussed below.
- D. Final Voucher Project with FHWA after work is completed. Caltrans may audit project charges to ensure that FHWA is billed for all federally eligible expenses. When Caltrans has billed FHWA for all expenses, it sends vouchering documents to FHWA and closes out the project.

In summary, project costs incurred prior to approval of the E-76 are ineligible for Federal reimbursement. Charges incurred for eligible costs after the E-76 is signed are federally reimbursable. Actual Federal reimbursement is not made until an E-76 is approved and executed. Progress payments are made during the course of construction. Upon completion of a project, Caltrans may audit the charges and close out the project.

If the local agency wants Federal participation for hardship and acquisitions, Federal approval must be obtained in advance of the environmental document. If approval is not obtained, the local agency should be aware that the acquisition must comply with the Uniform Act in order to be eligible for reimbursement for other project costs.

REPORTING COSTS

The FHWA has approved Caltrans' cost accounting and cost coding systems. The FHWA has agreed which Caltrans activities and expenditures are eligible for reimbursement for each phase of work. These agreements are incorporated into Caltrans' accounting system, coding instructions, and manuals--serving as a model for local agencies.

The local agency must be able to separate all costs and code them as eligible or ineligible. Caltrans will review this break down to ensure only eligible costs are reimbursed.

Right of Way costs are recorded in Caltrans' accounting system in two categories.

- Capital Outlay
- Incidental (Support)

Capital Outlay consists of those Right of Way costs necessary to acquire and clear right of way for the construction of the project. All Capital Outlay costs must be charged to a specific project. In order to meet the FHWA requirements, capital Right of Way costs must be documented in sufficient detail to determine eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition and clearance, relocation assistance, condemnation deposits and income and expense relating to sale of improvements.

Incidental costs include personnel and operating expenses of the Right of Way functions which produce the Capital Outlay payments. The term "Incidental Cost" is used by the FHWA, and "Support Cost" is used by Caltrans.

Caltrans uses a six-digit expenditure authorization (EA) number to segregate the cost categories for reporting purposes. The final digit phase of the expenditure authorization identifies the type of cost. For example, Phase 9 is for Capital Outlay, and Phase 2 is for Incidental Costs for Right of Way support expenditures. A Federal Project number is also assigned to each project and must be noted on all project documents.

PROGRESS PAYMENTS

Procedures for submitting invoices for payment are discussed at considerable length in Chapter 5 of this manual. Reference should be made to this chapter for an explanation of these procedures and sample invoice forms.

REIMBURSEMENT OF LOCAL AGENCY'S EXPENDITURES

Reimbursement of local agency's costs on Federal-Aid projects follows the same requirements as for Caltrans-State funded projects. The major difference between State funded and assistance funded projects is project expenditures for local projects are not entered initially into Caltrans mainline accounting system. They are accounted for and maintained within the local agency's project and fiscal system. The local agency is responsible for correctly identifying and segregating reimbursable costs as prescribed by Federal and State requirements.

Caltrans will assign to the local agency specific expenditure authorizations (Phase 2 and 9) for each category of right of way costs related to a project. Local agency's invoices must segregate their costs within these expenditure authorizations. If the project is assigned a "single phase" expenditure authorization, all costs shall be charged to the single phase expenditure authorization, the cost segregation detail shown on invoices, and the Final Report of Right of Way Expenditures.

Local agencies submit individual project claims to Caltrans periodically. Caltrans is responsible for obtaining reimbursement from FHWA for the local agencies. This is accomplished through Caltrans' CBARS. Project claims are entered into Caltrans' accounting system and become part of the Current Bill submitted to the FHWA. Caltrans makes payment of the funds to the local agency from the highway account and Caltrans then receives reimbursement from FHWA through the Current Bill. Whenever possible, reimbursement for final right of way costs should be claimed at the time they are known rather than waiting for the final project costs.

REIMBURSEMENT INVOICES/PROGRESS PAYMENT REQUEST

Procedures for submitting invoices for payment are discussed at considerable length in Chapter 5 of this manual. Reference should be made to this chapter for an explanation of these procedures and sample invoice forms.

In summary, local agency invoices for reimbursement of right of way costs are submitted on local agency letterhead following the exhibits shown in Chapter 5. Invoices must include all of the following information for each Federal-Aid project:

- Local Agency/State Agreement Numbers
- Federal-Aid Project Number
- Invoice Number (note whether "Progress" or "Final")
- Federal Reimbursement Ratio
- Federal-Aid Agreement Amount (the amount of estimated Federal share the agency will receive for each capital and incidental phase of the project)
- Cost breakdown for Incidental and Capital Costs as follows:
 1. Total Cost to Date
 2. Non participating Cost to Date
 3. Participating Cost to Date
 4. Participating Cost Shown on Previous Invoice
 5. Amount of Current Claim
 6. Invoice Total
 7. Final or Progress Claim

In addition to the above criteria, to meet FHWA requirements for reporting of right of way costs, progress claims for eligible reimbursement of expenditures for right of way shall be supported by the following documents and information:

- Attached to the invoice, a statement listing transaction detail on a parcel basis for land, improvements, damages, demolition and clearance, utility relocation, RAP, loss on sale of excess, condemnation deposits, net income sales, and rental income and expense, interest and goodwill. Note: payments for loss of good will are not reimbursable with Federal funds.
- Transactions for land should show parcel number, area acquired, along with any improvements or equipment, cost segregated between the right of way lines and any acquired excess land.
- Income credits to parcel should also be shown.

SALARIES AND WAGES

Generally, salaries, wages and related costs, (e.g., travel and per diem) are eligible for Federal reimbursement when incurred by employees who directly or indirectly are working on project related activities. Reimbursable activities for the acquisition of rights of way are:

- Preparation of right of way maps and deeds
- Surveying pertaining to right of way engineering needs only
- Making economic studies and other related preliminary work
- Appraisal for parcel acquisition
- Review of appraisals
- Parcel negotiations
- Preparation for the trial of condemnation cases
- Management and disposition of properties acquired
- Negotiations for utility relocation
- Relocation advisory assistance activities
- Other related labor expenses

Note: The costs of supervision and management of these activities are ineligible expenses (see discussion below, "Cost of Management").

OPERATING EXPENSES--PROJECT RELATED

Title and escrow costs are project-related capital expenses that are eligible for Federal reimbursement. Direct payment to title and escrow companies should be recorded against capital outlay support expenditure authorization (Phase 2). Escrow closing statements and title company billings should be retained in file to support costs claimed on a Progress Payment Request.

COST ACCUMULATION CENTERS

Cost accumulation centers may be used to capture related types of costs for later distribution to all projects or other benefiting activities for which work was performed during the accounting period.

These are small items of costs which affect several projects and may be eligible for reimbursement, but will result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.

COSTS OF MANAGEMENT

The costs of management, general supervision and other administrative support activities are not eligible for reimbursement. Examples of such costs include department heads, accounting, and clerical support activities.

FINAL PAYMENT/PROJECT COMPLETION

When the project is complete, the final request for payment shall be submitted to the DLAE as part of the Final Report of Expenditures. The procedures for submission of the final invoice and other supporting documents are discussed in detail in Chapter 17, "Project Completion." Included in this chapter are samples of each document. The final invoice will be reviewed in the district by the DLAE prior to payment. The final invoice for right of way costs should be submitted as soon as these costs are known in order to expedite the audit of the claim and reimbursement. The Final Report should contain final right of way maps for the project, a list of the parcels acquired for the project, and a breakdown of the right of way costs incurred.

After the final invoice is received, an audit may be performed by the Caltrans Audit Branch in Sacramento. An audit is done to verify that the expenses claimed for reimbursement were actually incurred, are eligible, and are sufficiently documented. If exceptions are found, the local agency will be asked to justify or support the costs. Any costs which cannot be justified or supported shall be declared ineligible for Federal reimbursement and the local agency will be required to repay these funds.

FINAL COST ADJUSTMENTS

ADJUSTMENT OF ELIGIBILITY OF COSTS

Generally the eligibility of right of way costs is determined by the right of way boundary lines. Only those parcels within the right of way lines are eligible. This eligibility determination is made parcel by parcel at the time of acquisition and again when the "As Built" lines are known. Adjustment of eligibility of costs is necessary when the "As Built" lines are different from the lines at the time of acquisition. It is recommended that the local agency prepare a Parcel List (see discussion below and Attachment #1 of Exhibit 17-K for an example) to be used as a control to assure that the accounting is complete and accurate as related to the final lines. The Parcel List will show which parcels need costs adjusted to the final right of way lines.

THE FINAL REPORT OF RIGHT OF WAY EXPENDITURES

Procedures to be followed at the completion of the project are discussed in Chapter 17, "Project Completion," of this manual. The discussion includes sample documents and the supporting documents to be submitted when final payment is sought and a project is being closed out.

When the project is complete, a summary of the progress payments is submitted on a Final Report of Right of Way Expenditures (see discussion and sample invoice in Chapter 17). This claim should be submitted when final right of way costs are known in order to expedite the audit of the claim and reimbursement. This report is due within six months of completion of acquisition. The final Report shall also include the following:

- Parcel List
- Final maps (those attached to the Right of Way Certification if not previously sent)
- Breakdown of Right of Way Costs

The total participating costs should equal the “Participating Costs to Date” as shown on the Final Progress Payment Request (Form FM 1592A).

FINAL VOUCHERING

The last phase of a Federal-Aid participating project is the final vouchering and closing of the project. After the project has been completed, a final voucher must be prepared and submitted to the FHWA as an E-76 by the Division of Accounting. The final voucher is a segregated summary of the project’s total costs and a determination of the final Federal share. Caltrans Division of Accounting uses the local agency’s Final Report as the basis for the final voucher. The Final Report of right of way expenditures must follow the Detail Estimate submitted to the FHWA.

RECORD RETENTION

Local Agency-State Agreements provide for retention of records. Ordinarily this is a three-year period after FHWA payment of the final voucher or a four-year period from the date of the final payment under the contract, whichever is longer. Caltrans will notify the local agency of the beginning date for record retention.

All documents and papers related to the project must carry the Federal-Aid project number for identification.

FEDERAL POLICIES SPECIFICALLY RELATED TO THE REIMBURSEMENT OF RIGHT OF WAY COSTS

The eligibility of right of way acquisition costs is determined by the right of way lines. Generally, costs for parcels inside the right of way lines are eligible, those outside are ineligible. However, there are some exceptions to the general rule that must be dealt with on an individual basis: e.g., an improvement which needs to be removed would be eligible for reimbursement.

The following are current Federal policies that are to be used for claiming right of way costs for Federal Reimbursement

A. Acquisitions

Federal participation in right of way costs requires two prior authorizations from the FHWA. In order to obtain this authorization it is necessary to identify the costs, parcels to be acquired, and the phase for which authorization is being requested. Costs to be reimbursed with Federal funds for eligible parcel acquisition reimbursement, initiation of acquisition (first written offer) cannot begin until the E-76 has been approved by the FHWA.

The following describes the three basic parcel types as related to the proposed right of way line:

- A Core Parcel is one which is acquired in its entirety (full take) whether or not the parcel lies entirely within the proposed right of way lines.
- An Excess Parcel is that portion of a property not within the right of way lines that is acquired even though it is not needed for construction or maintenance of the highway facility. These costs are not always eligible for reimbursement.
- A Non-Core Parcel is one which is not required in its entirety (part take) leaving the grantor with ownership of an adjacent remainder.

Federal-Aid authorization/agreement is required for both “Full Take” and “Partial Take” acquisitions.

B. Acquisition of Uneconomic Remnants

If prior FHWA approval has been secured, Federal funds can participate in the acquisition costs of uneconomic remnants.

C. Acquisition of Property Specifically for Exchange

Acquisition of property specifically for exchange occurs where the agency agrees to obtain property for the grantor in exchange for the required right of way. This occurs primarily in connection with public utilities or other public agencies where substitute property is acquired by the local agency to replace property required for the project. Both properties must be appraised. The costs of such acquisition are chargeable directly to the Right of Way Capital Outlay expenditure authorization. This type of acquisition is treated as acquisition of replacement property. Without prior Federal approval, reimbursement cannot be obtained.

D. Functional Replacement

This involves the replacement of real property in public ownership, either lands or facilities, or both, acquired for a highway project with other lands or facilities which will provide equivalent utility. FHWA has specific procedures which must be followed and requirements which must be met if the costs for a functional replacement property are to be reimbursed. These procedures are discussed in detail in 23 CFR 712.604, 605 and 606.

E. Condemnation Deposits and Interest Thereon

The amounts deposited in court in connection with the condemnation of a parcel are reimbursable. Subsequent progress billings must account for differences between the original amount deposited and the amount of the final settlement or award.

When settlements include interest, such interest payments can only be claimed for Federal reimbursement in specified situations. Participation is available for a period not to exceed 45 days if court procedures result in the owner not being able to withdraw a deposit made in support of an Order for Possession. If the deposit is available and the owner declines to withdraw it, any subsequent interest payment is ineligible for reimbursement.

Interest is reimbursable on the amount of an award in excess of the original deposit from the date of the original deposit until date of settlement or award. If court procedures prevent immediate delivery of the excess amount due following settlement or award, participation in interest on the excess amount for a period not to exceed 45 days is available. Participation may be allowed in the required interest payment on the excess until 45 days after final determination when the local agency has appealed an award.

Federal participation is not allowed in interest costs based on appraised fair market value of the property, when a Right of Entry has been secured except in cases of unusual circumstances and with prior approval of the FHWA.

Interest on amount of award over the deposit is an eligible expense with certain limits. Interest is not eligible for Federal reimbursement for non-participating costs such as acquired excess land, goodwill awards, or awarded defendant court costs.

F. Klopping

Klopping Damages (frustrated development rights) are always ineligible costs. The only damages that are eligible are those created by the before and after values to the remaining property.

G. Goodwill

Awards or settlements involving loss of goodwill, interest on goodwill and defendant's costs in a goodwill action are all ineligible for Federal reimbursement. Costs to appraise goodwill and/or try a goodwill action are also ineligible for reimbursement.

H. Personal Property

As a general rule, costs for the purchase of personal property are ineligible for Federal reimbursement. An exception would be where it is necessary to acquire the furniture of a furnished apartment.

I. Defendant's Costs in Connection with Condemnation Action

Federal participation is not allowed when the local agency is ordered to pay for the costs of a property owner's attorney fees, appraiser fees, expert witness fees or similar costs which are incurred by the property owner in connection with acquisition of rights of way, through condemnation proceedings or awarded as court costs in litigated cases.

J. Utility Relocations

The following conditions must exist for utility relocation costs to be eligible for reimbursement:

- An E-76 for "preliminary engineering – utility" must be approved before any preliminary utility design work is commenced.
- An E-76 for "utility alternate procedure" together with a listing of each affected utility company and an estimate of the cost of relocation for each company must be approved before any relocation work can commence for any of the affected utilities. See 23 CFR 645.119 (e)(2). AND
- An FHWA Specific Authorization (form RW 13-15) must be approved by Caltrans for each relocation before any relocation construction work can commence for each specific utility company listed on the E-76. The Specific Authorization must be supported by a Report of Investigation, Utility Agreement, Notice to Owner and other documentation as outlined in Chapter 13 of the *Right of Way Manual*. See 23 CFR 645.119 (a) & (b) and 23 CFR 645.113 (g).
- The FHWA Approval of Utility Agreement (also form RW 13-15) must be approved by Caltrans before reimbursement is requested from the FHWA. See 23 CFR 645.119 (a) & (b) and 23 CFR 645.117 (i)(1).
- See Chapter 14 of this manual and Chapter 13 of the *Right of Way Manual* for details. Everyone involved with the relocation of utility facilities should be thoroughly familiar with the provisions of 23 CFR 645, Subpart A.

- Immediately after Caltrans approves the utility agreement, authorized expenditures by the utility company can be reimbursed. No audit is necessary and receipts for payments are not required by the FHWA before progress payments are made.
- Final payments can be reimbursed only when costs for the utility work covered by the agreement are supported by evidence of payment by the local agency with fully itemized billings.
- Cost must be identified to each agreement.

K. Demolition and Clearance

The Federal government will participate in demolition costs of improvements on or within the right of way lines, provided the improvements involved are demolished subsequent to the authorization date of the project. This can occur regardless of whether or not the Federal government participated in the cost of acquisition of the improvements. But, if Federal funds did not participate in acquisition, then demolition must be separately authorized. The Federal government may also participate in clearance and demolition costs on improvements on a parcel outside the right of way provided it was acquired solely for an exchange and is eligible for Federal participation.

When a demolition contract includes improvements not eligible for participation, a separate bid item should be established in the bid proposal for the ineligible improvements so that the costs may be segregated.

When improvements purchased with Federal participation are sold for salvage, Federal funds are to be credited with the proceeds of the sale.

It should be stressed that whenever possible, improvements should be sold with the excess land rather than demolished to provide an income rather than incur an expense.

L. Relocation Assistance Program (RAP)

Federal and State laws require that relocation assistance be provided to any person, business, or farm operation displaced because of the acquisition of real property by a public entity for public use. Basically there are two programs:

- The Relocation Advisory Assistance Program which aids in locating suitable replacement properties.
- The Relocation Payments Program which provides payments for certain costs in relocating.

Local agencies must comply where Federal funds are to be used for the acquisition or construction for the proposed project. RAP is a complex program and will not be covered here. Caltrans *Right of Way Manual* provides detailed instructions on eligibility.

M. Disposition of Excess Lands

For accounting purposes, excess land is defined as that portion of any acquisition of right of way that lies outside the established right of way line and is not needed for the construction or maintenance of the highway facility. The only exceptions are the acquisition of property for replacement housing purposes, and the acquisition of property specifically for the purpose of exchange with another governmental agency or utility company.

The disposition of excess land is accomplished in a number of ways--competitive bid sales, fair market value exchanges, or inclusion into the right of way in a new project. Each method can produce variations in eligibility for reimbursement where a Federal-Aid project is involved.

N. Sales of Excess--Damages

FHWA regulations set forth criteria concerning transactions involving the sale of excess property for more or less than the original cost.

Generally, local public agencies will not request Federal moneys on the acquisition of excess parcels but where Federal participation is involved in excess acquisition, the subsequent sale or disposal of the parcel will require the local agency to return a portion of the proceeds to FHWA.

On Federal-aid right of way projects, damages may be claimed under the following conditions:

- The excess must have been acquired in connection with the project and with Federal participation in right of way costs authorized for the parcel.
- The excess exchange or sale transaction must occur within two years after opening the highway to traffic, or within two years after submitting the final voucher to the FHWA--whichever is earlier.
- The excess exchange or sale transaction must involve the complete disposal of the entire parcel. Interim transactions, such as sale of improvements, sale or exchange of a portion of the parcel should be noted for ultimate determination of total gain or loss.
- The local agency receives less than the value of the excess when the excess is sold or exchanged. Damages may be claimed for reimbursement under the conditions detailed above.

O. Exchange Transactions

When local agency-owned land is exchanged for other land to be incorporated into the right of way of a Federal-Aid project, Federal funds may participate in the current fair market value of the excess land being exchanged. However, Federal participation will not exceed the fair market value of the land being acquired.

Note: FHWA is likely to be involved in two transactions--the initial acquisition and the subsequent exchange or disposal.

The accounting requirements to record the exchange transaction involve consideration of the following:

- The Phase 9 or right of way expenditure authorization is charged for the market value of the right of way acquired.
- Damages on the excess' exchange may be claimed if the local agency receives less than the exchanged land's fair market value.
- Federal reimbursement for the market value of exchanged, cash, and construction features may not exceed the total market value of the right of way parcel being purchased.

Excess need not have been acquired on a Federal-Aid project to allow reimbursement of market value; but for severance damages (including selling costs), the excess parcel must have been originally purchased on a project with Federal participation.

P. Right of Way Sales Credits

Sales credits are due to FHWA funds when a right of way bought with Federal funds is sold then subsequently declared to be excess because of an alignment change, modification or termination action. The following time limits apply.

If excess right of way results from an alignment change:

- Excess should be disposed before final vouchering the project or no later than two years from the time the highway is opened to traffic--whichever is earlier.
- An extension of time limits can be granted by the FHWA.
- If property is not sold within the approved time limit, the cost of the excess acquisition must be credited to the project.

If excess results because the property is no longer needed for the purposes of the highway project:

- If within ten years of the modification or termination action the resulting excess property is neither sold nor reused on another Federal projects, then the FHWA must receive credit for the market value of the property at the end of ten years. If the parcel is on a terminated project, prior Federal approval is required for disposal (23 CFR 480).
- When crediting Federal funds is required, the cost of the disposition may be offset against the sales price.
- Except for parcels on the Interstate program, the disposal of excess resulting from a project's termination is treated the same as any other disposal. Then the parcel can be used for another highway project without giving a credit to FHWA.

The net proceeds of the sales credit should be shown on the Progress Payment requests as credit to the project's capital costs. This procedure reduces acquisition costs and payment due to the local agency.

Q. Rental Income and Expense and Disposition of Improvements

Vacated or improved land, acquired prior to actual need for highway construction must be available for rent. The FHWA participates in rental income and property management expenses if the property was acquired with Federal funds.

Rental account records must be maintained to record income and direct expenses identifiable to a parcel. Eligible property management costs include costs such as repairs to a rental unit, activities of a rental agent, advertising, etc. Any rental income or expense apportioned to a property's excess portion is ineligible for Federal participation. The Federal share of net rental income should be shown on the Progress Payment Requests as a credit to the project, or a deduction from any payment due to the local agency.

The local agency should separate costs incurred to collect rent on a parcel by parcel basis, then offset the costs against the actual rent collected.

Accounting records must be maintained for the disposition of improvements. Net income from the sale of improvements, except those on excess land, is shown as a credit to the project. Cost of the sale of improvements within the right of way is considered an expense that is a debit item and may be applied to gross sales proceeds. These credits must be given to the acquisition phase and not the rental phase.

13.14 DEFINITIONS

Access rights - The right of ingress and/or egress to and from a property which abuts on an existing street or highway. Access rights cannot be denied or unreasonably be restricted unless other access is available. If it is not, compensation is paid for this restriction of access.

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Advanced Acquisition - The acquisition of property by the local agency temporarily using their own funds prior to approval of the environmental document. To be eligible for future Federal reimbursement, right of way activities must have been performed in accordance with all Federal/State guidelines and the property acquired must be included in the right of way for the project. The two types of Advance Acquisition are Hardship and Protection:

- Hardship - a situation where unusual personal circumstances not shared by others (e.g., financial, or health) accrue to an owner of property aggravated or perpetuated by the pending project and can only be resolved by early acquisition of the property by the agency.
- Protection - a situation where substantial building activity or appreciation of vacant land value is likely to occur and early acquisition by the agency is needed to prevent development of the site and avoid higher acquisition, relocation or construction costs in the future.

Note: Hardship and protection acquisitions must comply with the Uniform Act, Title VI and 49 CFR 24. Local agencies must ensure all right of way activities comply with these criteria to avoid jeopardizing Federal participation in subsequent project costs.

Bundle of Rights - ownership of real property includes a great many rights, such as the right of occupancy and use, the right to sell it in whole or in part, the right to bequeath, the right of transfer by contract for a specific period of time. It is also referred to as the benefits to be derived by the occupancy and use of the real estate.

Damages - the loss in the value of the remainder in a partial acquisition of a property.

Dedication - Pursuant to the “police power” of government, this involves the setting aside of property for public use without compensation as a condition precedent to the granting of a permit, license, or zoning variance by a local governmental agency. The property owner must initiate contact with the local agency for a request to develop before the local agency can proceed with dedication requirements.

Donation - the voluntary conveyance of real property without compensation which may be utilized for an improvement project. Donations of future right of way can only be accepted if the offer to donate is done voluntarily by the property owner who is advised of the right to receive an appraisal but signs a written waiver of the right to be compensated.

Right of way that is donated must also receive environmental clearance even if no other right of way or rights in real property are required for the project.

Easement - the right or privilege to use real property (including access rights) distinct from the ownership of real property. There are a number of types as follows:

- Highway Easement - a right or rights granted or taken for the construction, maintenance, and operation of a highway which does not transfer fee title.
- Slope, Drainage or Utility Easements - easements for these purposes, covering areas which will either remain permanently under the acquiring agency control, or be relinquished, or conveyed to a utility owner by agreement.

Temporary Easement - an easement covering an area which is required for a limited period. On a specific date, all of the acquiring agency's interest in the area is terminated. An example is a Temporary (Construction) Easement which is used when the agency must enter a property for temporary use during construction of the project. There must be a specified time period for which the temporary right exists which is sufficient to allow for delays in advertisement of the project and for the anticipated construction order of work.

Eminent Domain - the inherent power reserved by government to acquire private property rights by due process of law when the necessity arises. When exercising this right, two basic requirements must be met; the use must be public, and just compensation must be paid to the owner prior to taking possession of the property.

Environmental Mitigation - the act of lessening the damages to the surrounding area and its inhabitants which are attributable to the proposed project. These damages can be lessened by acquiring alternate sites to replace wildlife habitat or wetlands, or by building sound walls for noise attenuation

Excess - property acquired for a project but which is in excess of the right of way requirements. Excess is created when there is a design change or when additional property was acquired to avoid an "uneconomic remnant." Whenever there is Federal participation in right of way acquisition, any subsequent decertification and ensuing disposal (sale or trade) of the newly created excess land requires FHWA's prior approval and reimbursement.

Fee Simple - an absolute ownership without limitations or restrictions but subject to the inherent powers of government, i.e., eminent domain, escheat, police power, and taxation.

Hazardous Materials/Waste - A material is hazardous if it poses a threat to human health or the environment. The term "hazardous waste" is applicable to storage, deposit, contamination, etc., involving a hazardous material which has escaped, or has been abandoned. It can be defined in general terms as any of the following:

- Flammable
- Reactive (subject to spontaneous explosion or fire) substances
- Corrosive--Toxic

Regulations require all toxic substances be removed in accordance with local laws prior to a public project proceeding to construction.

Inverse Condemnation - the legal process initiated by a property owner to claim compensation for the taking of, or damages, to his property as a result of a public project.

Just Compensation - in condemnation, the amount of the loss for which a property owner has established a claim for compensation. The measure of Just Compensation is Market Value (see below, Market Value).

Local Agency - a unit of government, county, city, municipality authorized to undertake a project for which Federal-aid is requested. This is sometimes referred to as local public agency.

Market Value - The California Code of Civil Procedure defined "market value" as:

- (a) The highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for doing so, each dealing with the other with full knowledge of all the uses and purposes for which the property is adaptable and available.
- (b) The fair market value for which there is no relevant comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Negotiation - the process of communication whereby an agreement is arrived at for the voluntary transfer of ownership at terms mutually acceptable to all parties of interest.

Partial Acquisition - the taking of only a part of a property for public use under the power of eminent domain and for which just compensation must be paid, offsetting the damages and/or special benefits to the remaining property.

Permit to Enter and/or Construction Permit - used when temporary rights are needed to perform work solely for the owner's benefit. These documents provide no permanent rights to the State (and the rights would not be condemned). Permits to Enter would also be used to collect data for hazardous waste or soil analysis and for environmental evaluation. It is possible to make payment for a Permit to Enter when appropriate.

Real Estate - refers to the physical land and appurtenances including structures affixed thereto.

Relocation Assistance - the process by which a government agency meets the legal requirements for providing relocation services, moving cost payments, increased costs to find and acquire replacement property, for all eligible individuals, families, and business displaced by a project. (Not to be confused with relocation of utilities).

Remainder - property remaining in possession of the owner after a partial acquisition in eminent domain.

Required Right of Way - any interests in real property required for the project that lay outside the existing right of way line. Includes any requirements from State-owned excess land, land purchased for other projects, and land purchased by other agencies.

Right of Entry - a document used to obtain permission to enter and perform some activity prior to the effective date of a Right of Way Contract or an Order for Possession. It may be used to certify control of right of way in rare instances such as emergency situations. Solicitation of Rights of Entry prior to the appraisal process should be restricted to circumstances which are exceptional or emergency in nature. Ordinarily, the Right of Entry will not dislocate people or impact improvements of a significant nature. In all instances when a Right of Entry is secured, the document must explain the provisions for use, disposal, amount, and the time period (see "Rights of Entry," in Section 13.12). Rights of Entry should not be confused with Temporary (Construction) Easement.

Right of Way Certification - a written statement summarizing the status of all right of way related matters with respect to a proposed construction project.

Uneconomic Remnant - a remainder of land so small or irregular that it has little or no value or utility to the owner.

13.15 REFERENCES

- 23 Code of Federal Regulations (23 CFR)
- 49 Code of Federal Regulations, Part 24 (49 CFR 24)
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Amendments 1987 (Uniform Act)
- Title VI of the 1964 Civil Rights Act
- Caltrans, *Right of Way Manual*
- FHWA, *Right of Way Project Development Guide*, September 1992
- FHWA, *Turnkey Right of Way Services Contracting Guide*, August 10, 1992
- Caltrans, *Right of Way Procedures for Developing Local Federal-aid Highway Projects*

**NO RIGHT OF WAY CERTIFICATION
LOCAL ASSISTANCE PROJECT
(OFF STATE HIGHWAY SYSTEM)**

(Date Prepared)

CITY OF _____

(OR)

COUNTY OF _____

Please Note:

This form is intended for use on local assistance projects **off** the State Highway System where Federal funds are used and where no additional right of way or rights in real property are required. If any of the questions below are answered "yes," this form should not be used. Instead, the Right of Way Certification Form (Exhibit 13-B) should be utilized.

PROJECT: _____
Federal Program (if available)

Project Location

General Description

YES NO

[] []

STATUS OF REQUIRED RIGHT OF WAY

1. Is additional right of way required?

[] []

2. Is any work proposed by this project outside of existing right of way?

STATUS OF ACCESS CONTROL

[] []

3. Are additional access rights required for this project?

STATUS OF AFFECTED RAILROAD OPERATING FACILITIES

[] []

4. Are any railroad operating facilities affected by this project?

MATERIAL SITE(S)

[] []

5. Are material sites required for this project?

DISPOSAL SITE(S)

[] []

6. Are disposal sites that are not part of the contractor's responsibility to remove excess material required for this project?

STATUS OF REQUIRED UTILITY RELOCATIONS

[] []

7. Is relocation of utilities not in place under franchise required? (This does not include the relocation of utility facilities owned and operated by the sponsoring local public agency.)

RIGHT OF WAY CLEARANCE

[] []

8. Are there improvements or obstructions located within the limits of this project?

AIRSPACE AGREEMENTS

[] []

9. Are there airspace agreements within the limits of this project?

YES NO

COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS

[] [] 10. Are there displacements for this project?

COOPERATIVE AGREEMENTS

[] [] 11. Are there any cooperative agreements affecting the project?

ENVIRONMENTAL MITIGATION

[] [] 12. Are there environmental mitigation parcels required for this project?

CERTIFICATION

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(G), which states in part; "The acquisition of right of way is not required for this project." The project may be advertised with the contract award being made at any time.

I understand Caltrans will not be performing a review of the PS&E at this time but that all documents relating to this project are subject to review by FHWA and/or Caltrans in order to verify this certification. I also understand that if deficiencies are found in any subsequent review, the following actions will be considered:

1. Where minor deficiencies are found, the certification for future projects may be conditional or not accepted until the deficiencies are corrected.
2. Where deficiencies are of such magnitude as to create doubt that the policies and objectives of Title 23 of the Code of Federal Regulations (or other applicable Federal and State laws) will not be accomplished by the project, Federal funding may be withdrawn.

LOCAL AGENCY CERTIFICATION

CITY OF _____

(OR)

COUNTY OF _____

By: _____
(person must be authorized to sign certification for local public agency)

Title: _____

Date: _____

CALTRANS ACCEPTANCE

I have not personally inspected the subject project nor reviewed the PS&E package but I am aware of the scope of the project. I have reviewed the above "No Right of Way Certification" and I am satisfied with the form and content. Caltrans accepts this certification as proper in form and apparently complete in content. Caltrans also accepts this certification with the understanding that the local agency statement of compliance (above) has not been confirmed by Caltrans.

By: _____

Title: _____

Date: _____

**RIGHT OF WAY CERTIFICATION
LOCAL ASSISTANCE PROJECT
(OFF STATE HIGHWAY SYSTEM)**

CITY OF _____

(OR)

COUNTY OF _____

Please note: This form is intended for use on local assistance projects, off system, where Federal funds are used and where right of way or rights in real property are required.

ONLY THE PARAGRAPHS RELATING TO THE SPECIFIC PROJECT SHOULD BE USED

PROJECT: _____
Federal Program (if available)

RIGHT OF WAY CERTIFICATION NO. _____

(Insert 1, 2, or 3 for the type of Certification being made)

_____ Project Location

_____ General Description

1. STATUS OF REQUIRED RIGHT OF WAY

The acquisition of right of way is not required. All work proposed is within existing right of way acquired for a previous construction project.

OR

Right of way (has been) (will be) acquired in accordance with applicable policy and procedure covering the acquisition of real property. (City) (County) (has) (will have) legal and physical possession and right to enter on all land as follows: (Note: Parcels shown in Items A-F should total the number shown in item B.1.)

A. Total number of parcels required. _____

1. Parcels acquired (escrow closed or Final Order of Condemnation recorded.)
_____*

2. Parcels covered by Order for Possession.
_____*

Parcel No.	Owner	Effective Date
------------	-------	----------------

3. Parcels covered by Right of Entry
_____*

Parcel	Owner	Type**	Effective Date	Date Funds Made Available to Owner++
--------	-------	--------	----------------	--------------------------------------

*Note: Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements.

** Either RE or RE in approved RC (Right of Way Contract)

++ If no entry is made in this column a full explanation is required.

4. Parcels covered by a Right of Entry executed prior to appraisal. _____

Parcel No.	Owner	Effective Date
------------	-------	----------------

5. Parcels covered by Resolution of Necessity only. _____ *

(Used only rarely in a Cert. No. 3 situation where the project must be advertised, the Resolution of Necessity has been adopted but the Order of Possession has not yet been served.)

Parcel No.	Owner	City/County Resolution Date	Anticipated OP Effective Date
------------	-------	-----------------------------	-------------------------------

6. Parcels covered by other acquisition documents as follows: (Explain) _____ *

This section is meant to cover acquisitions where the document is a license, permit, etc., not otherwise covered by Paragraph a, b, c, d, or e above.)

Location (P.M./K.M.)	Owner	Type Document	Effective Date	Expiration Date
-------------------------	-------	---------------	----------------	-----------------

7. No. of Parcels with a value in excess of \$500,000 _____

Dual Appraisals for each parcel?	_____	_____
	Yes	No

B. Construction Permits, etc., required. _____ *

Location (P.M./K.M.)	Owner	Type Document	Effective Date	Expiration Date
-------------------------	-------	---------------	----------------	-----------------

2. STATUS OF ACCESS CONTROL

A. Conventional Highway, not required

(OR)

B. Freeway/Expressway

(OR)

*Note: Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements.

(OR)

- C. Non-Interstate Access Controlled Highway (or other facility with access control) (Access Being Acquired-Use with (b) or (c) above. Except as provided in the approved plans for the project, all right to access to or from the section of highway to be improved under the project and the abutting property either are prohibited by law, or have been acquired, or are being acquired in condemnation proceedings heretofore commenced and which will be prosecuted to completion.

(OR)

(Access Previously Acquired-Use with (b) or (c) above.) Except as provided in the approved plans for the project, all rights of access to or from the section of highway to be improved under the project and the abutting property either are prohibited by law or have been acquired under a previous project.

3. STATUS OF AFFECTED RAILROAD OPERATING FACILITIES

No railroad operating facilities are affected.

(OR)

The _____ Railroad has approved the proposed work, which is within their right of way but which does not require the adjustment of railroad facilities. The necessary clauses will be placed in the contract special provisions. The project may now be advertised.

(OR)

The _____ Railroad (and when needed, the Public Utilities Commission) has approved the proposed work, which is within the railroad right of way and does require the adjustment of railroad facilities. The railroad, or its contract forces, will provide the necessary labor, materials, and/or equipment to adjust their facilities. The necessary clauses will be placed in the contract special provisions. The project may now be advertised.

4. MATERIAL SITE(S)

None required

Commercial

Select appropriate Statement

Optional site(s) secured as follows:

Mandatory site(s) secured as follows:

Parcel/Agreement#	Owner	Document/Effective Date	Expiration Date
-------------------	-------	-------------------------	-----------------

*Note: Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements.

5. DISPOSAL SITE(S)

None required
Commercial

Select appropriate Statement

Optional site(s) secured as follows:
Mandatory site(s) secured as follows:

Parcel/Agreement#

Owner

Document/Effective
Date

Expiration Date

6. STATUS OF REQUIRED UTILITY RELOCATIONS

None required

Select appropriate statement(s)

(OR)

All utility work has been completed.

Select appropriate statement(s)

(OR)

All utility work will be completed by a stated date prior to award of the contract (see schedule below).

(OR)

All necessary arrangements have been made for the completion of all remaining utility work required to be coordinated with project construction. The special provisions in the contract provide for the coordination (see schedule below).

(AND)

Arrangements have been made with the owners of all conflicting utility encroachments which will remain within the right of way of the project so that adequate control of the right of way will be achieved.

**NOTE: (Remove words in parenthesis if not applicable.)

(AND)

Federal participation has been authorized. (If applicable.)

(AND)

The following utilities are located within the project rights of way but require no relocation:

Company

Type Facility

(AND)

The following utilities are in conflict with the project and require relocation as follows:
(If applicable)

Right of Way Notice No.	Notice Date	Liability (Owner=0) (City/CO.=C)	Company	Type Facility	Relocation schedule Concurrent with (or) Bid Item*	Date (or) construction
----------------------------	----------------	--	---------	------------------	--	---------------------------

*Additional information required for each bid item:

Bid Item No.	Type Facility	Liability (Owner/City or County)	Federal Participation (Yes/No) If yes, a copy of Specific Authorization to Relocate Utilities memorandum must be attached.
--------------	---------------	-------------------------------------	---

7. RIGHT OF WAY CLEARANCE

There were no improvements or obstructions located within the limits of this project.

(OR)

All right of way clearance work has been completed and there are no improvements or obstructions remaining within the right of way area required for construction.

(OR)

All necessary arrangements have been made for remaining right of way clearance work to be undertaken and completed as required for proper coordination with the construction schedule as follows:

Parcel No.	Location (P.M.)	Description	Salvable/ Non-Salv.	Method of Disposal	Date Available to Construction Contractor	Site
------------	-----------------	-------------	------------------------	--------------------------	--	------

8. AIRSPACE AGREEMENTS

There are no airspace lease properties within the limits of this project.

(OR)

All necessary arrangements have been made with airspace lessee(s) and/or in Contract Provisions to minimize conflicts between lessee's activities and contractor's operations.

(OR)

Airspace lease (describe) has been canceled effective (date).

(OR)

(Explanation of other disposition of airspace lease area.)

9. COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS

Compliance was not required as there were no displacements for this project.

(OR)

The (City) (County) has complied with the Federal Uniform Relocation Assistance and Real Property Acquisition Act, as amended. The (City) (County) has also complied with all the steps relative to relocation advisory assistance and payments as required by applicable policy and procedure, and no person has been required to relocate without at least 90 days written notice. If residential relocation was involved, all individuals and/or families have been relocated to decent, safe and sanitary housing, or the (City) (County) has made replacement housing available to the relocatees.

Types of relocation involved on this project:

Personal property relocation

Residential relocation

Business, farm or nonprofit relocation

NOTE: (Enter only those types involved in the specific project.)

Exceptions:

Occupants of residences, businesses, farms or nonprofit organizations who have not yet moved from the right of way will be protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

Parcel No.	Location (P.M.)	Name of Occupant (Owner) (Tenant)	Date to Vacate	Type Occupancy (Res., Bus., Farm, Nonprofit Org., or Personal Property only)
------------	-----------------	--------------------------------------	----------------	---

10. COOPERATIVE AGREEMENTS (Optional Entry)

None required

(OR)

Agency

Agreement No.

11. ENVIRONMENTAL MITIGATION

No environmental mitigation parcels are required for this project.

(OR)

All environmental mitigation parcels on the project have been acquired

(OR)

Acquisition of environmental mitigation parcels is ongoing. Explanation

12. CERTIFICATION (USE THE APPROPRIATE STATEMENT)

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(b), (c)(1) or (c)(2). The project may be advertised with contract award being made at any time.

(OR)

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3). The project may be advertised at any time. The project will be certified as conforming to Paragraph (b), (c)(1) or (c)(2) by _____.
(Date)

(AND)

Explanation and reasons why a #3 certification is being used and substantiation that the Cert. #1 or #2 date given above is realistic.

The following certification statement will be used on the initial submittal of Special Certification No.3:

"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3). The project may be advertised at any time. Approvals from FHWA are attached for the work-around. Appropriate notification has been included in the Bid Documents. An updated Certification No.3 will be provided by _____."
(Date)

(OR)

The following certification statement will be used on the updated Special Certification No. 3 required no later than 15 days prior to bid opening:

"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3). The project has been advertised and the contract may be awarded. Approvals from FHWA are attached for the work-around. I have confirmed that all appropriate notifications have been included in the Bid Documents concerning said work-around."

13. INDEMNIFICATION BY LOCAL AGENCY

The (City) (County) agrees to indemnify , defend, and hold harmless the Department of Transportation (Caltrans) from any and all liability which may result in the event the right of way for this project is not clear as certified. The (City) (County) shall pay, from its own nonmatching funds, any costs which arise out of delays to the construction of the project because utility facilities have not been removed or relocated, or because rights of way have not been made available to (City) (County) for the orderly performance of the project work.

CITY (OR)
COUNTY OF _____

By: _____

The undersigned Caltrans Official has reviewed this Right of Way Certification as to form and content. Based on the review of the documents submitted, the Certificate is accepted on behalf of the local public agency. It remains the sole responsibility of the local public agency to ensure compliance with the Federal Uniform Act and this Certificate is accepted on their behalf.

Accepted as to form and content:

By _____

Title _____

Date _____

CONSULTANT SELECTION CRITERIA AND GUIDE

Appraisal Consultants

To be used on projects where property rights are to be acquired for a project, whether those rights are temporary, permanent, in fee, or easement, or compensable damages accrue to property as a result of the project. The appraiser measures the fair market value of the rights to be acquired.

When selecting appraisal consultants, care must be exercised to ensure that the candidates have expertise in the specific appraisal field appropriate for the contemplated project. The greater the complexity of the project, the greater the need for highly specialized and/or experienced appraisers.

Appraisal consultants should possess:

- Certification for Real Estate Appraisers as issued by the Office of Real Estate Appraisers. This Certification is required by law when Federal funds are involved and by Caltrans policy when working on the State Highway System.
- Minimum two (2) years experience at the working level in the appraisal of rights for eminent domain purposes
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law
- Specific knowledge and experience appropriate for the proposed project.

Review Appraiser Consultants

To be used where property rights are appraised for acquisition. The review appraiser is the person responsible for appraisal quality, value determinations and establishing or recommending just compensation. The review appraiser should be a part of, or a representative of the management team. However, the review appraiser must remain independent and must not be subject to undue influence or pressure from management to arrive at a particular value or to accept inadequate appraisal reports. It is essential that consultant review appraisers understand that their responsibility is to recommend an estimate of value of just compensation for use by the acquiring agency. The Uniform Act requires that an official of the acquiring agency must make the final determination of just compensation.

Review appraisal consultants should possess:

- Certification for Real Estate Appraisers as issued by the Office of Real Estate Appraisers. This Certification is required by law when Federal funds are involved and by Caltrans policy when working on the State Highway System.
- Minimum two (2) years experience at the working level in the appraisal of rights for eminent domain purposes
- Minimum two (2) years experience reviewing appraisals of rights for eminent domain purposes
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law
- Specific knowledge and experience appropriate for the proposed project

Acquisition Consultants

To be used when rights are to be acquired, whether those rights are temporary, permanent, in fee, or easement, or compensable damage payments are to be made as a result of the project.

When selecting acquisition consultants, care must be exercised to ensure that the candidates have expertise with the conditions affecting acquisition present in the contemplated project. These may vary, and some factors to be considered include property type, type of occupancy, and project design/impact on remainder properties. The greater the complexity of the project, the greater the need for highly specialized and/or experienced acquisition consultants.

Acquisition consultants should possess:

- Real Estate Brokers License as issued by the Department of Real Estate (required by law)
- Minimum two (2) years experience at the working level in the acquisition of rights for eminent domain purposes
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law
- Specific knowledge and experience appropriate for the proposed project

Relocation Consultants

To be used when there are occupants and/or personal property within the project area to be relocated outside the project area. Occupancy may be residential or non-residential, including agricultural uses. Relocation specialists may be used to prepare the relocation impact documents (part of the environmental clearance document) in the planning stage. A consultant proficient in both acquisition and relocation may be retained for both functions under the “caseworker” approach.

When selecting relocation consultants, care must be exercised to ensure that the candidates have expertise with types of occupancy affected by contemplated project, whether residential (owner-occupied), residential (tenant-occupied), personal property only, business, or non-profit organization. The greater the complexity of the project, the greater the need for highly specialized and/or experienced relocation consultants.

For relocation services, relocation consultants should possess:

- Minimum two (2) years experience at the working level providing public agency relocation assistance
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law.
- Specific knowledge and experience appropriate for the proposed project

Property Management Consultants

To be used when tenants will be in occupancy of the right of way after the agency has acquired the property but prior to displacement.

When selecting property management consultants, care must be exercised to ensure that the candidates have expertise with types of tenancies affected by the contemplated project, whether residential, personal property only, business, or non-profit organization. The greater the complexity of the project, the greater the need for highly specialized and/or experienced property management consultants.

Property management consultants should possess:

- Real Estate Brokers License as issued by the Department of Real Estate (required by law)
- Minimum two (2) years experience at the working level in management of rental properties
- Knowledge of applicable sections of the Uniform Relocation and Real Property Acquisition Policies Act, State eminent domain law, and landlord tenant law
- Specific knowledge and experience appropriate for the proposed project

Right of Way Project Management Consultants

May be used to coordinate and direct the work of other consultants as well as local agency staff. Will have primary responsibility to ensure the work products for the project satisfy all requirements of applicable laws, statutes, regulations, policies, and procedures. Need not demonstrate proficiency in any individual functional area.

Project manager consultants should possess:

- Minimum five (5) years experience at a supervising or managerial level in a right of way organization operating with the power of eminent domain
- Knowledge of the Uniform Relocation and Real Property Acquisition Policies Act and State eminent domain law
- Familiarity with project management theories and techniques, including project scheduling, staff assignments, and coordination and communication with other project entities

Turnkey Right of Way Consultants

Multi-functional organizations that may be used to provide all right of way services required of a given project. Should be competent in each individual functional area. Turnkey consultants must have sufficient staff to preserve separation of the appraisal, appraisal review, and acquisition functions. An individual may be technically proficient in multiple functions, but may not be used as a turnkey consultant.

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RELOCATION ASSISTANCE SUMMARY

The following explanation is general in nature and is not intended to be a complete statement of Federal and State relocation laws and regulations. Any questions concerning relocation should be addressed to the Caltrans District Right of Way Local Programs Coordinator.

Any persons to be displaced will be assigned to a relocation advisor, who will work closely with each displacee in order to see that all payments and benefits are fully utilized, and that all regulations are observed, thereby avoiding the possibility of displacees jeopardizing or forfeiting any of their benefits or payments. At the time of the first written offer to purchase, owner/occupants are given a detailed explanation of the State's relocation services. Tenant occupants of properties to be acquired are contacted soon after the first written offer to purchase, and also are given a detailed explanation of the Relocation Program. To avoid loss of possible benefits, no individual, family, business, farm, or nonprofit organization should commit to purchase or rent a replacement property without first contacting a relocation advisor.

I. RELOCATION ASSISTANCE ADVISORY SERVICES

In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the local agency sponsoring the project will provide relocation advisory assistance to any person, business, farm or nonprofit organization displaced as a result of the acquisition of real property for public use. The local agency will assist displacees in obtaining comparable replacement housing by providing current and continuing information on the availability and prices of both houses for sale and rental units that are "decent, safe, and sanitary." Nonresidential displacees will receive information on comparable properties for lease or purchase. (For business, farm, and nonprofit organization relocation services, see Section IV.)

Residential replacement dwellings will be in equal or better neighborhoods at rents or prices within the financial ability of the individuals and families displaced, and reasonably accessible to their places of employment. Before any displacement occurs, comparable replacement dwellings will be offered to displacees that are open to all persons regardless of race, color, religion, sex, national origin, and consistent with the requirements of Title VIII of the Civil Rights Act of 1968. This assistance will also include the supplying of information concerning Federal and State assisted housing programs, and any other known services being offered by public and private agencies in the area.

Persons who are eligible for relocation payments and who are legally occupying the property required for the project will not be asked to move without first being given at least 90 days written notice. Occupants eligible for relocation payment(s) will not be required to move unless at least one comparable "decent, safe, and sanitary" replacement residence, available on the market, is offered to them by the local agency.

II. RESIDENTIAL RELOCATION PAYMENTS PROGRAM

The Relocation Payment Program will help eligible residential occupants by paying certain costs and expenses. These costs are limited to those necessary for or incidental to the purchase or rental of the replacement dwelling and actual reasonable moving expenses to a new location within 50 miles of the displacement property. Any actual moving costs in excess of the 50 miles are the responsibility of the

displacee. The Residential Relocation Program can be summarized as follows:

Moving Costs

Any displaced person who lawfully occupied the acquired property, regardless of the length of occupancy in the property acquired, will be eligible for reimbursement of moving costs. Displacees will receive either the actual reasonable costs involved in moving themselves and personal property up to a maximum of 50 miles, or a payment based on a fixed moving cost schedule.

Purchase Supplement

In addition to moving and related expense payments, fully eligible homeowners may be entitled to payments for increased costs of replacement housing.

Homeowners who have owned and occupied their property for 180 days or more prior to the date of the first written offer to purchase the property, may qualify to receive a price differential payment and may qualify to receive reimbursement for certain nonrecurring costs incidental to the purchase of the replacement property. An interest differential payment is also available if the interest rate for the loan on the replacement dwelling is higher than the loan rate on the displacement dwelling, subject to certain limitations on reimbursement based upon the replacement property interest rate. The maximum combination of these three supplemental payments that the owner-occupant can receive is \$22,500. If the total entitlement (without the moving payments) is in excess of \$22,500, the Last Resort Housing Program will be used. (See the explanation of the Last Resort Housing Program below.)

Rental Supplement

Tenants who have occupied the property to be acquired by the local agency for 90 days or more and owner-occupants of 90-179 days prior to the date of the first written offer to purchase may qualify to receive a rental differential payment. This payment is made when the agency determines that the cost to rent a comparable “decent, safe, and sanitary” replacement dwelling will be more than the present rent of the displacement dwelling. As an alternative, the tenant may qualify for a down payment benefit designed to assist in the purchase of a replacement property and the payment of certain costs incidental to the purchase, subject to certain limitations noted under the Down Payment section below. The maximum amount payable to any tenant of 90 days or more and any owner-occupant of 90-179 days, in addition to moving expenses, is \$5,250. If the total entitlement for rental supplement exceeds \$5,250, the Last Resort Housing Program will be used.

In addition to the occupancy requirements, in order to receive any relocation benefits the displaced person must buy or rent and occupy a “decent, safe, and sanitary” replacement dwelling within one year from the date the department takes legal possession of the property, or from the date the displacee vacates the displacement property, whichever is later.

Down Payment

The down payment option has been designed to aid owner occupants of 90-179 days and tenants with no less than 90 days of continuous occupancy prior to the local agency's first written offer. The down payment and incidental expenses cannot exceed the maximum payment of \$5,250. The one year eligibility period in which to purchase and occupy a "decent, safe, and sanitary" replacement dwelling will apply

Last Resort Housing

Federal regulations (49 CFR 24) contain the policies and procedures for implementing the Last Resort Housing Program on Federal-Aid projects. Last resort housing benefits are, except for the amounts of payments and the methods in making them, the same as those benefits for standard residential relocation as explained above. Last resort housing has been designed primarily to cover situations where a displacee cannot be relocated because of lack of available comparable replacement housing, or when the anticipated replacement housing payments exceed the \$5,250 and \$22,500 limits of the standard relocation procedure, because either the displacee lacks the financial ability or other valid circumstances. In certain exceptional situations, Last Resort Housing may also be used for tenants of less than 90 days. After the first written offer to acquire the property has been made, the local agency will within a reasonable length of time, personally contact the displacees to gather important information, including the following:

- Preferences in area of relocation;
- Number of people to be displaced and the distribution of adults and children according to age and sex;
- Location of school and employment;
- Specific arrangements needed to accommodate any family member(s) special needs;
- Financial ability to relocate into a comparable replacement dwelling which will adequately house all members of the family.

III. THE NONRESIDENTIAL LOCATION ASSISTANCE PROGRAM

The Nonresidential Relocation Assistance Program provides assistance to businesses, farms, and nonprofit organizations in locating suitable replacement property, and reimbursement for certain costs involved in relocation. The Relocation Advisory Assistance Program will provide current lists of properties offered for sale or rent, suitable for a particular business's specific relocation needs. The types of payments available to eligible businesses, farms and nonprofit organizations are moving and searching expenses, and possibly reestablishment expenses or a fixed In Lieu payment instead of any moving, searching and reestablishment expenses. The payments types can be summarized as follows:

Moving Expenses

Moving expenses may include the following actual, reasonable costs:

- The moving of inventory, machinery, equipment and similar business-related property, dismantling, disconnecting, crating, packing, loading, insuring, transporting, unloading, unpacking, and reconnecting of personal property.
- Loss of tangible personal property provides payment for actual, direct loss of personal property that the owner is not permitted to move
- Expenses related to searching for a new business site, up to \$1,000 for reasonable expenses actually incurred.

Reestablishment Expenses

Reestablishment expenses related to the operation of the business at the new location, up to \$10,000 for reasonable expenses actually incurred

Fixed In Lieu Payment

A fixed payment in lieu of moving and searching payments and reestablishment payment may be available to businesses which meet certain eligibility requirements. This payment is an amount equal to the average annual net earnings for the last two taxable years prior to the relocation and may not be less than \$1,000 nor more than \$20,000.

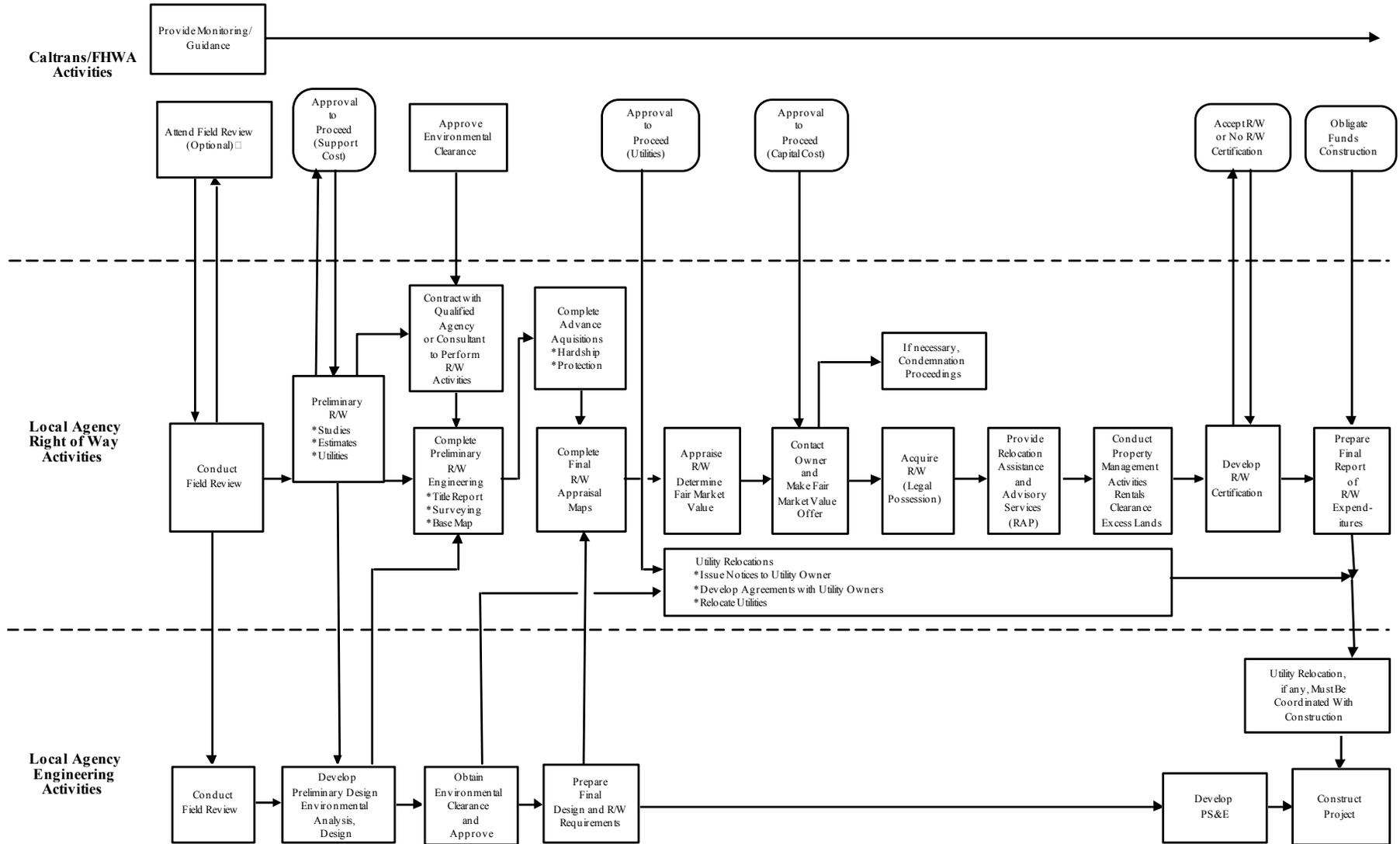
IV. ADDITIONAL INFORMATION

Reimbursement for moving costs and replacement housing payments are not considered income for the purpose of the Internal Revenue Code of 1954 or resources for the purpose of determining the extent of eligibility of a displacee for assistance under the Social Security Act, local "Section 8" Housing programs, or other Federal assistance programs.

Right To Appeal

Any person, business, farm or nonprofit organization which has been refused a relocation payment by the local agency Relocation Advisor or who believes that the payment(s) offered by the Agency are inadequate, may appeal for a special hearing of their complaint. No legal assistance is required. Information about the appeal procedure is available from the Relocation Advisor.

Flow Chart of Right of Way Procedures



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